1788.

# SUPREME COURT OF THE UNITED STATES.

## No. 115.

THE EXECUTORS OF JOHN McDONOGH ET AL., APPELLANTS,

vs.

MARY MURDOCK ET AL., HEIRS OF JOHN McDONOGH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF LOUISIANA.

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Circuit court of the United States, fifth circuit, eastern district of Louisiana.

MARY MURDOCH et al., heirs of John McDonogh, vs. THE EXECUTORS OF MCDONOGH et al. } No. 1981.

Pleas and proceedings before the honorable the circuit court of the United States, in and for the fifth circuit and eastern district of Louisiana, in the city of New Orleans, in said district, on the 29th day of April, A. D. 1852.

Be it remembered, that heretofore, to wit, on the 10th day of November, A. D. 1850, came the complainants, Mary Murdoch, her husband, William F. Murdoch, Anne Cole, Eliza Hayne, her husband, George Hayne, George T. Jenkins, guardian of his minor children, and Geo. F. Cole, Louisa Sheffey and her husband, Hugh W. Sheffey, Jane Beaver, her husband, Wm. Beaver, Sarah Beaver and her husband, Jacob Beaver, R. H. Hammett, Jesse Hammett, Ann Maria Snook, and her husband, Peter Snook, Eliza Anderson, and her husband Joseph E. Anderson, Sarah Day, Rosalba P. Lynch, Maria Louisa Ord, and W. F. Murdock, guardian of Louisa Welsh, —— Welsh, —— Welsh, and ——— Welsh, by their solicitors, J. R. Grymes, and Benjamin and Micou, Reverdy Johnson, and Mott and Frazer; and filed in the clerk's office their bill of complaint as follows:

*Bill in equity.*

To the judges of the circuit court of the United States, for fifth circuit, sitting in the eastern district of Louisiana.

Your orators, Mary Murdoch, together with William F. Murdoch, her husband; Anne Cole, Eliza Hayne, together with George Hayne, her husband; George T. Jenkins, of Baltimore, herein acting as guardian of his minor children; George Jenkins, Margaret McDonough Jenkins, and M. Conway Jenkins, all residing in Baltimore, Maryland; George F. Cole, of the State of South Carolina; and Louisa Sheffey, together with Hugh W. Sheffey, her husband, of the State of Virginia; Jane Beaver, together with William Beaver, her husband; Sarah Beaver, together with Jacob Beaver, her husband; Robert H. Hammett, Jesse Hammett, Ann Mariah Snook, together with her husband, Peter Snook, all of the State of Maryland; Eliza Anderson, together with her husband, Joseph E. Anderson, of the State of Texas; Sarah Day, wife of Nicholas Day; Rosalba P. Lynch, wife of Andrew A. Lynch, of the State of Maryland; Maria Louisa Ord, wife of —— Ord, of the State of California; and William F. Murdoch, acting guardian of

Louisa Welsh, —— Welsh, —— Welsh, and —— Welsh, all minors, residing in the city of Baltimore, Maryland; bring this their bill of complaint, against C. Roselius, Wm. E. Leverich, F. B. D. Aquin, and A. D. Crossman, executors of the will of John McDonough, deceased; against the Mayor and Councils of the city of New Orleans; the Society for the relief of destitute Orphans, and against all others hereafter intervening herein.

And thereupon your orators complain and say, that they are respectively citizens and residents of the several States herein above named and set forth, and that such of your orators as are married women appear and sue herein by the authorization of their said husbands; that your orators are the next of kin and heirs at law of the said John McDonough, and claim by representation as follows: The said Anne Cole, Mary Murdoch, Eliza Hayne, George F. Cole, Louisa Sheffey, as the only children of Mary Cole, a sister of the said deceased; the said George Jenkins, Mary McDonough Jenkins, and Conway Jenkins, minors, as the only children of Margaret Cole, (the deceased wife of the said George Jenkins,) who was a daughter of said Mary Cole, deceased; the said Jane Beaver, Sarah Beaver, Robert H. Hammett, Jesse Hammett, Ann Maria Snook, and Eliza Anderson, as the only children of Jane Hammett, deceased, who was a sister of said John McDonough, deceased; the said Sarah Day, as the only child of Joseph McDonough, who was a brother of said John McDonough, deceased; the said Rosalba P. Lynch, as the only child of Margaret Ludden, deceased, wife of Anderson A. Lynch, and a sister of said John McDonough, deceased. The said Maria Louisa Ord, as the only child of Robert Pogue, deceased; the said Louisa Welsh, —— Welsh, —— Welsh, and —— Welsh, as the only children of Maria Pogue, deceased, late the wife of —— Welsh, deceased; the said Robert and Martha being the only children of Elizabeth Pogue, deceased, who was a sister of said John McDonough, deceased.

That said John McDonough left no ascendants or descendants, and that your orators are the nearest of kin to said deceased.

And your orators show and allege, that they are the only heirs at law of John McDonough, late a citizen of the State of Louisiana, and a resident of the town of McDonoughville, near New Orleans; that they are entitled, by the laws of Louisiana, to his entire estate, real and personal, in full property; and that by the death of said deceased, your orators, as such heirs, are seized and possessed of all and singular the said estate, of whatever nature, composing his said succession.

And your orators further charge and represent, that since the death of said John McDonough a certain paper, purporting to be the olographic will of said deceased, and bearing the date of the 29th December, 1838, has been presented to the fifth district court of New Orleans, and admitted to probate; and that Christian Roselius, Abeal D. Crossman, William E. Leverich, and François B. D'Aquin, have been duly recognised and qualified as testamentary executors under the said will,

and as such have taken possession of, and are administering, the moveable effects of said succession; and under the orders of the court aforesaid are preparing an inventory of all the real and personal estate of said deceased, which is of large amount and of great value, to wit, of the value of two or more millions of dollars and upwards; and your orators here annex a copy of said olographic will, and a certain memoranda and instructions of the said testator, the original of which is also in his handwriting, marked exhibit "A," to which your orators pray leave to refer as often as may be necessary, as to a part of this their bill of complaint, and to have considered wherever referred as a part of this bill.

And your orators do further aver, that said will contains various dispositions that are utterly null and void, and which cannot be carried into effect; that the same gives one or two small legacies of trifling amount, and then proceeds to devote the mere usufruct of the mass of his estate, composed of lands and tenements, goods and chattels, rights and credits, to wit, of all kinds of property, moveable and immoveable, to purposes not only not sanctioned, but reprobated by law.

And your orators would further represent, that the said revenues and usufruct of said estate are attempted to be disposed of, as follows:

That, although in the beginning of said will, the said testator nominally gives the cities of Baltimore and New Orleans the residue of his real and personal estate, subject to the payment of certain annuities thereinafter mentioned, yet in the subsequent parts thereof he explains and modifies said disposition, and annuls the same, by declaring that no part of his estate, or of the revenues or rents thereof, should ever go into the possession of said cities or either of them; but that the said cities should merely have a supervision and visitorial power over the administration of said property by the associations and bodies corporate, created or to be created under said will, as hereinafter set forth; and that the whole of said estate, real and personal, rights and credits, moveable and immoveable, should pass into the hands of certain commissioners and agents, to be elected annually, to wit, three commissioners by the city council of New Orleans, and three agents by the city council of Baltimore, which commissioners and agents are to constitute a board, with perpetual succession; to which board the said testator gives the seizin and possession of all and singular the real estate of his succession, from the moment of its organization in the manner prescribed in said will, for purposes of administration only; and further directs and enjoins upon the executors named in the will, so soon as they shall have received and realized the personal or moveable estate, to devote the whole proceeds thereof to the purchase of other real estate in the city and suburbs of New Orleans; and the same, when purchased, and the title deeds thereof, to hand over to the said commissioners and agents of said general estate; all and singular the lands, tenements, and real estate left by the said testator, as well as such as should be so purchased, to remain forever inalienable and unsold in the hands of said commissioners and agents; and the power to dispose of, sell, alien-

ate, or mortgage the same, is expressly withheld from said commissioners, whose right, title, interest, and powers, in, to, and over the said real estate, so left by the deceased, and so purchased by executors, are limited to the administration of said property, and the receipt of the rents and revenues thereof, to be by them, from time to time, divided between other similar boards or bodies of commissioners and certain corporations, as hereinafter set forth and expressed; so that the entire real estate of the succession, and such as should be thereafter acquired by the executors as aforesaid, should be and remain a permanent fund, to be entitled the general estate of said testator, forever inalienable in the hands of said commissioners, who were directed to apply for, and obtain, an act of incorporation; by all which, the intention and will of said testator is clearly expressed, not to give the said commissioners and agents the title and ownership of the said estate, but to leave to them, as trustees, the mere administration thereof, in trust, to receive and distribute the rents and revenues thereof forever, to the uses and purposes hereinafter expressed; which uses are the following, to wit:

First. In trust to pay to the American Colonization Society, a body corporate, of the State of Maryland, the one-eighth of the nett yearly revenue of the said estate for each and every year, for the term of forty years, from and after the decease of said testator, provided, that not more than twenty-five thousand dollars be paid to said society in any one year.

Second. In trust, to pay to certain other commissioners, to be afterwards named by the city councils of the city of New Orleans, from time to time, and who are also to have perpetual succession, the one-eighth of said rents and revenues, until such time as they shall have received the sum of six hundred thousand dollars; and as they receive the same, to invest in bank stocks, or other securities, and lands, so as to augment the amount thereof, and to suffer the same to accumulate until the aforesaid sum of six hundred thousand dollars shall have been received from the rents and revenues aforesaid, exclusive of interest thereon; and then, and not before, to devote a portion of said fund, not exceeding one-third, to the purchase of lands in the vicinity of New Orleans, and the erection and furnishing of buildings, to be used as an asylum for the poor of both sexes, and of all ages and castes of color; and the remaining two-thirds of said accumulated fund to be invested in the purchase of real estate in the city and suburbs of New Orleans, from the rents of which the said asylum should in all future time be supported; and which lands, so purchased as aforesaid, should never thereafter be sold or alienated, but should remain forever a capital fund, the rents and interests whereof only should be devoted to the maintenance and support of said asylum and its inmates.

Third. In trust to, and for the use of, the Society for the relief of destitute Orphan Boys, a corporation of the city of New Orleans, and State of Louisiana, one-eighth part of the rents and revenues of said general estate, for each and every year until the same should amount to the full sum of four hundred thousand dollars, exclusive of the inte-

rest accumulated thereon; which said one-eighth part is not to be paid to the said society or its directors, but to be deposited in some one or more of the banks of New Orleans paying interest on deposites, and thence to be drawn for the sole purpose of investing the same in real estate in the said city and suburbs of New Orleans; which real estate to be so acquired is never to be sold or alienated, but must remain forever a permanent fund, the rents and revenues only of which should be received and enjoyed by the said society; and which investments in real estate could only be made by the joint action and concurrence of the directors of said society, the mayor and aldermen of the city of New Orleans, and the commissioners and agents of the said general estate.

Fourth. In trust to, and for the use of, a school farm, for the education of the poor, and to be hereafter erected in some part of the State of Maryland, the one-eighth part of the said nett annual revenues of said general estate until the same should amount to the sum of three millions of dollars; and also, the sooner to accumulate the said amount, directing that, as the several portions or eighths of said rents and revenues devoted to the purposes herein before stated, to wit, to the colonization society, the orphan asylum, and the future asylum for the poor, should be satisfied or expire by their limitation, then the said portion should be added to the said school farm fund, so as to ensure the earlier accumulation of the above prescribed amount of three millions of dollars; which said several annual sums, amounting to the aforesaid sum, the commissioners and agents of the general estate fund are directed and empowered to pay to certain other directors, to be annually elected and appointed by the mayor and council of the city of Baltimore, in the State of Maryland, and to have perpetual succession, which directors are required to invest the funds so by them received in bank stock or other good securities, or landed estate, on interest, so as to augment the same to the largest possible sum; and when the said annual payments should have amounted to the full sum of three millions of dollars, exclusive of its interest, and not before, the said directors are directed and empowered to invest not more than one-sixth part of the entire fund, principal and interest, in the purchase of a tract of land in the neighborhood of the said city of Baltimore, in the erection and furnishing of buildings suitable for said school farm; and the remaining five-sixths of said accumulated fund to be invested in real estate in the city, suburbs, and vicinage of Baltimore aforesaid; which lands and tenements when purchased are to be perpetually inalienable, and the rents and revenues thereof forever devoted to the support and maintenance of said school farm.

Fifth. In trust to pay one-half the remaining rents and revenues of the said general estate to certain other commissioners, constituting another and distinct board, to be composed of six persons, to be elected annually by the city councils of the three Municipalities *of the three municipalities* of New Orleans, who, together with the three commissioners elected for the administration of the said general estate, should constitute a board of nine commissioners of public free schools of New

Orleans, with perpetual succession, and with power to receive from said commissioners, and agent of the said general estate, the said one-half of the remainder of said rents and revenues, and to apply the same to the purchase of suitable lots, and the erection of suitable buildings, to be used as free schools in New Orleans and its suburbs, and to the payment of teachers and the maintenance and support of said schools.

Sixth. In trust to pay the balance of the said rents and revenues not already disposed of to certain other commissioners, nine in number, to be annually elected by the mayor and councils of the city of Baltimore, and to have perpetual succession, and who should constitute a board of commissioners of the public free schools of the city of Baltimore, which board is directed and enjoined to appropriate the rents and revenues so received to the purchase of proper lots for the erection of free schools, and for the salaries of teachers, and the support and maintenance forever of such schools in the city of Baltimore.

Seventh. In trust from and after the expiration of the term limited for the payment of the said annuities, or after the amounts prescribed as aforesaid shall have been satisfied, then the one-half or four-eighths of the rents devoted to said objects are to be paid to the said commissioners of public free schools in New Orleans, and to said commissioners of public free schools in Baltimore, for the purposes herein before expressed.

And the said testator, the more fully to secure the appropriation of the rents and revenues aforesaid of his said accumulated fund, or general estate, to the objects and purposes aforesaid, directs and enjoins the said commissioners, and agents of said general estate, the commissioners of said future asylum for the poor intended to be established in the vicinity of New Orleans, the said directors of the school farm intended to be established in the vicinity of the city of Baltimore, the said commissioners of public schools in the city of New Orleans, and the said commissioners of public schools in the city of Baltimore, to solicit and obtain from the legislatures of the States of Louisiana and Maryland acts of incorporation; in all of which acts an express provision should be inserted that the real estate, the administration and usufruct whereof was by the will intended to pass to the said several boards of directors, agents, and commissioners, should be and remain forever in alienable, and that the said acts of incorporation should further provide for the execution of the said will of deceased according to its tenor and the true intent of the said testator, and to accomplish the objects thereof through all time.

And your orators further show, that after devoting the rents, revenues, and usufruct of said estate forever to the purposes aforesaid, the said will proceeds to direct and declare that, in case the said cities of New Orleans and Baltimore should combine together, and knowingly and wilfully violate any of the directions of the said will touching the management of said general estate, then the rest, residue, and remainder, and accumulations of said general estate, subject to the said annuities, should pass to the States of Louisiana and Maryland, in equal shares,

for the purpose of educating the poor of said States; and further, that in case there should be a lapse of both the legacies to the cities of Baltimore and New Orleans, or either of them, wholly, or in part, then both, or either of the said legacies, wholly or partially so lapsed, shall enure, so far as relates to the city of New Orleans, to the State of Louisiana, *to the State of Louisiana*, and so far as it relates to the city of Baltimore, to the State of Maryland, in order that the legislatures of said States may carry into effect the intentions of the said last will, as far and in the manner which may appear to them most proper. And the said testator, after said last mentioned clauses, again repeats his unalterable determination that his entire succession, with the exception of the small legacies to certain relatives, and the transportation of certain negroes to Africa, should be and remain forever inalienable, and held sacred, so that the rents and revenues thereof only should in any event be applied solely to the uses and purposes aforesaid for all future time.

And your orators further show, that the said will contains divers other clauses and provisions, not here particularly set forth, but for which your orators refer to the said exhibit "A," being the copy thereof here annexed for reference.

And your orators further say, that all and singular the clauses and provisions aforesaid of said will herein before particularly specified and set forth are utterly null and void.

First. That the leading object of said will is to separate and divide the enjoyment and usufruct of all and singular the estate, real and personal, of the testator from the ownership and title thereof forever, which is a purpose reprobated by the law.

Second. That there is no legatee in existence to receive the said usufruct, and that the constitution and laws of this State forbid the organization of any such body corporate as the commissioners and agents of the said general estate, which is the sole donee of the usufruct of said estate forever.

Third. That the donation of said usufruct is not made to such commissioners for their own use and benefit, but merely to transmit the same to other bodies, corporate and politic, already in being, or hereafter to be created, but which can never be created under the laws of Louisiana. That an attempt is thus made to create a series of trusts, not for immediate execution, but perpetual, which are, in substance and in law, in this State substitutions and fidei commissa; all of which dispositions are reprobated and forbidden by the law.

Fourth. That the rents and revenues so received by said commissioners and agents of the general estate fund, and to be by them distributed from time to time to other directors, commissioners, and corporations, are devoted by said will to the purposes of accumulation and of investing in real estate, which shall never be alienated or sold; which objects are also reprobated by the law.

Fifth. That the residuary claims in favor of the States of Louisiana and Maryland convey no part of the said succession, or any right, title, or interest therein to said States, because said States can receive only

in case of a lapse of legacies to the cities of Baltimore and New Orleans. That the said will gives to said cities nothing but a visitorial power of certain associations and bodies corporate, intended to be created as herein before set forth, but which can never exist, because all such corporations or associations are utterly prohibited by law; and inasmuch as there is no legacy whatever, and no beneficial or proprietary interest in the property of the succession, or any part thereof bequeathed to said cities, or either of them, no such legacies can lapse to the profit of said States, or either of them.

Sixth. That the entire nett rents and revenues of the said estate, real and personal, do not, as your orators are informed, exceed the sum of eighty thousand dollars per annum, and, under such administration as the said will directs, could not be increased; and that the time required for the accumulation of the enormous sums destined to be in future devoted to the purposes expressed in the will, before they can be used for said purposes, would extend from fifty to two hundred years—terms utterly beyond those for which the law allows the will of a testator to control the destination of his property.

And your orators do further charge, that the entire frame and plan of said will, and all its objects and purposes herein before enumerated, are contrary to the public policy, tending to withdraw large masses of real estate from commerce, to prevent its profitable cultivation and improvement, to embarrass its titles, and to create dangerous and oppressive monopolies and perpetuities; for all which, and for divers other violations of the laws and policy of the land, all and singular the foregoing provisions of said will, which attempt to convey the usufruct of said estate, real and personal, to the said purposes, are utterly null and void, and ought so to be declared and decreed.

And your orators do further show, that the proprietary title and ownership of the real and personal property, rights, and credits composing the succession of the said deceased, are not disposed of, devised, and bequeathed by the said will to any person or persons, body or bodies, politic or corporate, whatever, in being, or to be hereafter created, but that said title and ownership remain unaffected and undisposed of by the said will, and have descended by operation of law to your orators, as next of kin to said deceased, who are of right seized and possessed thereof as the only heirs at law, and fully entitled to retain and enjoy the said estate free of the illegal and perpetual usufructs attempted to be created thereon by the aforesaid illegal and void provisions of said will. And your orators do further aver, that the aforesaid executors, appointed by the said will, and who have qualified and accepted the trust reposed in them, have taken possession of all and singular the moveable effects, rights, and credits of said succession, and have also collected rents due for the real estate belonging to it, and have received and collected debts due to said succession; that said executors are bound to account to, and to pay over and deliver to, your orators, all and singular the said moveables and credits so in their hands, and all sums so collected by them, the value and amount whereof exceed

the sum of five hundred thousand dollars, and also to deliver to your orators the titles of the real estate of the said succession, and all and singular the books, muniments, and records thereof, which have come to their hands; but, although requested, the said executors refuse to account and pay as aforesaid, as in law and equity they are bound to do.

And your orators further charge and allege, that notwithstanding the utter nullity of the said bequests of perpetual usufruct herein before described, the cities of Baltimore and New Orleans, the States of Maryland and Louisiana, the Colonization Society, and the said Society for the relief of destitute Orphans, pretending that the said provisions of said will are valid, have given it out in public speeches and writing that they will attempt to carry into effect the said illegal provisions of said will, and to that end will disturb the lawful possession of the property of the succession by your orators, and to prevent the said executors from accounting to your orators, as in equity and law they are bound to do; all of which said actings, and doings, and threats of such interference, are contrary to good conscience and equity, and demand the interposition and aid of this honorable court.

And your orators do further charge and aver, that they are citizens and residents of the States of Maryland, Virginia, South Carolina, Texas, and California; that the said City of New Orleans and said Society for the relief of destitute Orphans, are composed of citizens of Louisiana, and domiciliated therein; that the said C. Roselius, A. D. Crossman, William E. Leverich, and F. B. D'Aquin, the executors who have qualified under said will, are all citizens of Louisiana; that the States of Louisiana and Maryland are exempt from suit by the Constitution of the United States, and the City of Baltimore and said Colonization Society are beyond the jurisdiction of this honorable court.

Wherefore, and to the ends that such orders and decrees may be granted as to justice and equity may appertain, may it please the court to grant the writ of subpœna, to be directed severally to the Mayor of the city of New Orleans, and the several Municipalities thereof, to the said Society for the relief of destitute Orphans, and its president, to the said Christian Roselius, A. D. Crossman, W. E. Leverich, and F. B. D'Aquin, executors of the said will of deceased, commanding them, and each of them, to appear and answer hereto, and especially under their corporal oaths to answer the interrogatories hereunto annexed, and to them severally addressed; and such orders of publication as may, according to the practice of this court as a court of equity, be deemed proper, to notify the Mayor and city council of Baltimore, the said Colonization Society, and all others who are now, or may hereafter be, interested, of the filing of this bill, and of the object thereof, that they may, if they deem it proper, appear and answer the same.

And your orators pray that the said executors of the said will may be decreed to account, to and with your orators, for all the property and estate, of whatever kind or nature, belonging to the succession, which

has or may came to their hands, and for all rents, increase, interest, and profits upon the same, and to deliver and pay the same to your orators; and that the said executors be also decreed to hand over to your orators the titles and acts of sale of the real estate belonging to said succession, and all and singular the books, papers, records, and muniments thereof, which has come or may come to their hands.

And your orators pray that the said Mayor and Councils of the city of New Orleans, and of the municipalities thereof, the said executors, and the said Society for the relief of destitute Orphans, and all others who may intervene herein for their respective interests, be forever enjoined and prohibited from taking possession, or attempting to take possession, of any part of the real estate of said succession, either by themselves, their officers, or by any other means whatever; that your orators be decreed to be the sole and exclusive owners thereof, and of every part thereof, and to be in full and legal possession of the same, and their right, title, and possession be forever quieted by the decree of this honorable court. And your orators pray, that all such other and further relief may be decreed to them in the premises as they may be in justice and equity entitled to; and your orators will ever pray, &c.

J. R. GRYMES and
BENJAMIN & MICOU,
REVERDY JOHNSON,
MOTT & FRASER.
*Solicitors for complainants.*

Personally appeared Wm. F. Murdoch, one of the complainants in the foregoing bill of complaint, and agent of the other complainants, and being duly sworn deposes that all and singular the facts and allegations in the foregoing bill of complaint, so far as stated to be to the knowledge of the complainants, are true and correct; and so far as the same are stated from the information of others, he believes them to be true and correct.

WM. F. MURDOCH.

Sworn to and subscribed before me, this 10th December, 1850.
J. W. GURLEY, *U. S. Comr.*

*Interrogatories to be answered by the several defendants.*

By the executors who have qualified.

1st. Is not the paper marked exhibit "A," a true copy of the will of John McDonough, deceased; and has not the original thereof been admitted to probate in the fifth district court of New Orleans?

2d. Have not you, and each of [you,] qualified as executors under said will?

3d. Have you not made an inventory of said estate, and what is the appraised value of the moveable or personal effects and credits, and what the appraised value of the immoveable and real estate, of said succession.

4th. What amount of interest or of fruits, rents, and revenues of said

property, real and personal, has come into your hands? Annex a full, true, and perfect account of the same, and of your administration thereof.

5th. Are not the complainants named in the foregoing bill of complaint the heirs at law of the said deceased, and is not their degree of relationship properly set forth in the foregoing bill of complaint?

By the Mayor of the city of New Orleans, representing the said city, and the Municipalities No. one, two, and three, composing the same.

6th. Are not the complainants in the foregoing bill of complaint the heirs at law of John McDonough, deceased, and is not their degree of relationship correctly set forth in the foregoing bill?

7th. Is not the annexed exhibit, marked "A," a true copy of the will of said deceased, as admitted to probate in the fifth district court of New Orleans?

8th. Do you not, as mayor of said city, and in its behalf, lay claim to said succession, or to some and what part thereof, or interest therein? Have you not recommended to the councils to appoint commissioners to take possession of the said succession in pursuance of the terms of said will?

9th. What claim do you make on behalf of said city to said property, or a portion thereof, or interest therein? State the nature and extent of your claim in the premises.

To be answered by the presiding officer of the Society for the relief of destitute Orphans.

10th. Do you not claim some right, title, or interest, or some payment of money or annuities, out of the succession of said J. McDonough, deceased; and what right, title, interest, or payments do you claim on behalf of your said society?

To all the said defendants against whom process has been issued, and to all who may hereafter come in as intervenors, claimants, or defendants herein.

11th. Each and every of you will answer each and every charge and allegation of the foregoing bill of complaint, as if thereto specially and particularly interrogated.

12th. Each and every of you will answer the first and fifth of the foregoing interrogatories addressed above to the executors of said will.

13th. Each and every of you will state particularly and at large what claim, if any, you set up to the said succession of deceased, or to any part thereof, or to any interest therein. Describe fully the nature and extent of your claims.

STATE OF LOUISIANA,
*Fifth district court of New Orleans.*

*Will of John McDonogh.*

Filed 28th October, 1850.—Ne varietur, 28th October, 1850.
(Signed) A. M. B., *Judge.*

In the name of God, amen. I, John McDonogh, a native of the city of Baltimore, in the State of Maryland, United States of America,

now an inhabitant of McDonogh, in the State of Louisiana, aware of the uncertainty of this mortal life, yet of sound mind and memory, for which and all other blessings thanks to Almighty God, do make this my olographic will, as my last will and testament, for the disposal of all my wordly property and effects of every kind, of which I may die possessed, in manner and form following:

That is to say, (first declaring that I have never been married, and that I have no heirs living either in the ascending or descending lines,) I will that immediately after my death an inventory shall be made of all my property and effects by a notary public, assisted by two or more persons, whom my executors, hereinafter named, shall appoint, the same to be done on oath. I give, will, and bequeath to the children of my sister Jane, the widow of a Mr. Hamet, of Baltimore, in the State of Maryland, in equal proportions, all that lot or parcel of ground, with the improvements thereon, laying in Baltimore county, and State of Maryland, containing ten acres, more or less, which lot of ground I acquired by purchase on the twenty-seventh day of February, in the year of our Lord eighteen hundred and nineteen, of John Pogue, of the said city of Baltimore, as per deed of conveyance to me enregistered on the same day by William Gibson, clerk of the Baltimore county court, among its land records. The usufruct, however, of the aforementioned landed property and improvements I give and bequeath to my said sister Jane during her lifetime.

I give, will, and bequeath to my said sister Jane, widow Hamet, the sum of six thousand dollars, recommending to her, my said sister, to place said six thousand dollars on interest, either in bank stock or otherways, and by economy to make the interest thereof support her in her old age. I will and bequeath their freedom, as a reward for their long and faithful services, to my old servants, Gabrial, James Thornton, Tanness, or Dennis, Noel, Monk, Old John, John Defage, Old Harry, Richard, and Long Mary, requesting my executors, hereinafter named, to take the necessary steps, in conformity to law, to see this my will and desire executed.

It is my will, and I direct my executors, hereinafter named, immediately after my death, to correspond with the American Colonization Society, at the city of Washington, in the District of Columbia, for the purpose of ascertaining when said society intends sending a vessel to Liberia, on the coast of Africa, with emigrants from New Orleans, and by the first vessel so sailing from New Orleans for Liberia to send all the rest and residue of my black people, old and young, with the exception of the ten aforementioned individuals, to whom I have directed their freedom to be given here in New Orleans, men, women, and children, and also with the exception of the black man Phillip, his wife Fanny, and their children; the black woman Jane, or Jenny, and her children; the mulattoe man George, a carpenter by trade; the mulattoe boys William and Henry, carpenters by trade; the black men Houma, David Crocket, and George Calhoun; the mulattoe or griff boy Jerry; the black women Sophie and Dolly, Hagar, and Anna, or

Hannah, and their children, all of whom I have lately purchased, as it is my will that they, the said Phillip and Fanny, his wife, and their children, Jane and her children; the mulattoe man George, a carpenter by trade; the mulattoe boys William and Henry, carpenters by trade; the black men Houma, David Crocket, and George Calhoun; the mulattoe or griff boy Jerry; and the black women, Sophia, Dolly, Hagar, and Anna, or Hannah, and their children, with any other black or colored people whom I may acquire by purchase subsequent to this my last will and testament, shall serve those, by being hired out for wages, or kept employed on my plantations, if thereon so employed, at my death, to whom I have hereinafter willed the rest, residue, and remainder of my estate, real and personal, fifteen years from and after my death; when then, after said service of fifteen years, my executors, hereinafter named, will deliver said black and colored people up to the American Colonization Society for colonizing the free people of color of the United States, established at the city of Washington, in the District of Columbia, to be also sent to Liberia, on the coast of Africa. And to pay a proportionate part of the charter of said vessel for transporting them to Africa, furnishing them with provisions, stores, medicines, &c., &c., for the voyage. I also direct my executors (hereinafter named) to lay out and expend, for the use of those, my people, who are to go immediately after my death to Liberia, the sum of one thousand dollars in such articles as ploughs, hoes, axes, nails, common locks, hinges, clothing, garden and other seeds, &c., &c., and to divide out those articles among them in equal proportions, and to see them put on board the vessel at the time of sailing. My executors will also be pleased to give letters of recommendation to those, my people, directed to the inhabitants of that colony, setting forth their good characters, and the morality of their lives, as a passport to their good opinions, and to purchase and place in the hands of each of said individuals, old and young, at the moment of sailing for Africa, the volume of the holy gospel of the old and new Testament, as the most precious of all the gifts we have it in our power to give, or they to receive. And for the more general diffusion of knowledge, and consequent well being of mankind, convinced as I am that I can make no disposition of those worldly goods which the Most High has been pleased so bountifully to place under my stewardship, that will be so pleasing to Him as that by means of which the poor will be instructed in wisdom, and led into the path of virtue and holiness, I give, will, and bequeath all the rest, residue, and remainder of my estate, real and personal, present and future, as well that which is now mine, as that which may be acquired by me hereafter, at any time previous to my death, and of which I may die possessed, of whatsoever nature it may be, and wheresoever situate, (subject to the payment of the several annuities or sums of money hereinafter directed and set forth; which said annuities or sums of money are to be paid by the devisees of this my general estate, out of the rents of said estate,) unto the Mayor, Aldermen, and Inhabitants of New Orleans, (my adopted city,) in the State of Louisiana, and the Mayor, Aldermen, and Inhabitants of Baltimore, (my native city,) in

the State of Maryland, and their successors, in equal proportions of one-half to each of the said cities of New Orleans and Baltimore, forever.

To and for the several interests and purposes hereinafter mentioned, declared, and set forth concerning the same, and especially for the establishment and support of free schools in said cities, and their respective suburbs, (including the town of McDonogh as a suburb of New Orleans,) wherein the poor, and the poor only, of both sexes, of all classes and castes of color, shall have admittance, free of expense, for the purpose of being instructed in the knowledge of the Lord, and in reading, writing, arithmetic, history, geography, &c., &c., under such regulations as the commissioners (to be appointed as hereinafter directed) of said schools shall establish; always understood and provided, however, that the holy Bible of the old and new Testament, shall be at all times and forever made use of in those schools, as one, and the principal one, of the reading and class books, which shall be used by the pupils therein; as the first object of every school, and of all teaching of the youth of our country, should be to implant in their minds a knowledge of their duty to God and the relation of men to their divine Creator; and that singing classes shall be established and forever supported, and singing taught as a regular branch of education in said schools, by which means every pupil will acquire the rudiments of the art, and obtain a knowledge in singing sacred music. As relates to my real estate, that no part thereof shall ever be sold or alienated by the said Mayors, Aldermen, and Inhabitants of the respective cities of New Orleans and Baltimore, or their successors, but the same shall forever thereafter be let, from time to time, to good tenants; the lots of ground improved with houses laying in the city of New Orleans, its suburbs, town of McDonogh, or elsewhere, let by the month or year; and the unimproved lots of ground in the city of New Orleans, its suburbs, town of McDonogh, or elsewhere, leased for a term not to exceed twenty-five years at any one time, (the rent payable monthly or quarterly,) and to revert back at the end of said time, with all the improvements thereon, (free of cost to the lessors,) to be rented thereafter by the month or year. And the lands, wherever situate, in the different parishes of the State, leased in small tracts for a term not to exceed one to ten years, revertible back with their improvements, to be released for a shorter time and at higher rates.

My intentions being, and in consequence instructing my executors (hereinafter named) to invest my personal effects, (say money, bonds, notes, or stocks on hand, interest accruing thereon, furniture of house in which I reside, and effects about it, as well as the amount of all debts owing to me as fast as they are received,) in real estate, say lots of ground and houses, and lots of ground laying in the city or suburbs of New Orleans, and hand over said real estate as soon as purchased, with the title deeds thereto, to the commissioners and agents of my general estate, to be named by the respective corporations of the said cities of New Orleans and Baltimore in the manner hereinafter directed.

So that by said means the whole of my estate, real and personal,

excepting only my black people, the legacy bequeathed the children of my sister Jane, and that to herself, will become a permanent fund on interest, as it were, viz., a fund in real estate affording rents, no part of which fund (of the principal) shall ever be touched, divided, sold, or alienated, but shall forever remain together as one estate, termed in this my last will and testament as "my general estate," or "the general estate," and be managed as I herein direct. The nett amount of rents which shall be collected annually shall be divided annually, half and half, between the said two cities of New Orleans and Baltimore, by the commissioners and agents of my general estate, to be named in the manner hereinafter directed, after paying the several annuities and sums of money hereinafter provided for and set forth, and applied forever to the purposes for which it is hereby intended and destined.

Firstly. I give and bequeath to the American Colonization Society, for colonizing the free people of color of the United States, established at the city of Washington, in the District of Columbia, for the purposes of its noble and philanthropic institution, an annuity for the term of forty years, counting from and after the day of my decease, of the one-eighth part (or twelve and a half per cent.) of the nett yearly revenue of rents of the whole of the estate, as herein before willed and bequeathed unto the mayors, aldermen, and inhabitants of the cities of New Orleans ond Baltimore; but which one-eighth part of the nett yearly revenue of rents of said estate, as aforesaid, shall not entitle the said American Colonization Society, for colonizing the free people of color of the United States, to receive or demand in any one year a larger sum than twenty-five thousand dollars, should the one-eighth part thereof amount to a larger sum. Trusting in full confidence that the inhabitants of this free and happy land, throughout all its borders, from Maine to Louisiana, will sustain this institution, one of the greatest glories of our country, and enable it to accomplish its humane and holy object in its full extent. And, notwithstanding that I look upon and consider the instruction of the poor in the knowledge of God, and the wisdom of man, as the first, best, and holiest of all charities, as they are thereby taught their duty to their Creator, and those everlasting principles of virtue which instill self respect, and teach men the dignity of their nature, which restrain them from falling into vice, and becoming in consequence inmates of the penitentiary or alms-house; and do not consider the endowment of asylums or hospitals as the best mode of permanently serving and doing good to my fellow man; still, as it is probable, whilst the present race of men exists, constituted as we are, that some portion thereof, from the various causes to which frail humanity is liable, will fall into error, and of consequence become helpless and destitute.

Secondly, I give and bequeath to the Mayor, Aldermen, and Inhabitants of the city of New Orleans, in the State of Louisiana, and their successors forever, for the express and sole purpose of establishing an asylum for the poor, of both sexes, and of all ages and castes of color,

where they may be sheltered, clothed, fed, and taken care of, made useful according to their respective degrees of health, strength, and capacity, and mendicity thereby banished from the streets of the city and its suburbs, (including the town of McDonogh,) an annuity of the one-eighth part (or twelve and a half per cent.) of the nett yearly revenue of the rents of the whole of the general estate as herein before willed and bequeathed unto the mayors, aldermen, and inhabitants of the cities of New Orleans, in the State of Louisiana, and of Baltimore, in the State of Maryland, and their successors forever; the said annuity to be paid yearly, until such time as the said one-eighth part of the said nett yearly revenue of rents shall amount to the full and entire sum of six hundred thousand dollars, when it shall cease, and be no longer paid. And for the purpose of carrying this my desire and intent into effect, I request, authorize, and empower the city councils of the city of New Orleans, on the first Monday in January of every year, to name and appoint one respectable citizen out of each ward of the city and suburbs of New Orleans, (including the town of McDonogh,) but who shall not exceed seven in number, nor be members of the said city councils at the time, who shall be commissioners therein; which commissioners, so named, shall serve for the term of twelve months, and until a new election, on the first Monday of January of the following year, shall be made, by the said city councils, of commissioners to replace those of the preceding year, (none of whom shall be elected for the second year,) and so on from year to year, to the end of time; and said commissioners shall have the management of said institution, its funds, and every thing in relation to it, (the mayor and city councils of the city of New Orleans having, however, the general supervision, and to whom the commissioners are liable for the faithful performance of their duty herein, and to whom, annually, on going out of office, they must render accounts of their administration, showing particularly its receipts and expenses, state of its funds, its real estate, &c., &c.; which accounts will be audited by the said city councils, through a committee from their body, named for the purpose, and who will publish them yearly in two of the public newspapers printed in the city of New Orleans.) The said commissioners (to be named as aforesaid) will receive annually or semi-annually the amount of the annuity, until such time as they shall have received, according to this bequest, the whole amount of it, say the sum of six hundred thousand dollars; and, as they receive it, they shall invest it in bank stock, or other good securities, on landed estate on interest, so as to augment the amount thereof by the accumulation of interest to the largest possible sum up to the time when the last of the annuity shall be received by them; at which time (when the last of the annuity shall be received) it is my desire, and I direct, the said commissioners to take such part of said sum (not to exceed, however, the one-third of the whole amount of principal and interest which may have accrued thereon) as may be necessary, and invest it in the purchase of such landed estate, and in the erection of such buildings, as will be appro-

priate to the object intended and wanting, and in the furnishing of such buildings, when completed, in beds, bedding, clothing, and all other necessary articles; and the residue of said sum, whatever it may be, but which shall be at least the two-thirds of the whole amount of principal and interest, I direct to be invested in the purchase of real estate, say lots of ground and houses, and lots of ground situate in the city or suburbs of New Orleans, such lots of ground as will probably greatly augment in value; which real estate, when purchased, shall never thereafter be sold or alienated, for the purpose of deriving therefrom a permanent revenue (in rents) for the support of said institution forever, as no part of the principal sum, or the interest which may accrue thereon, shall be taken for the support of the institution; my intention being that its support, and the payment of all the expenses necessary for its support, shall be supplied exclusively from the revenue in rents of its real estate, and the revenue derivable from the labor of the poor, its inmates. (Which houses, as also the buildings of the institution, I recommend and direct to be kept constantly insured against the risk of fire; so that, if an accident should occur, there would be means to rebuild them.) I recommend to the commissioners to select a situation high and healthy for the establishment of the institution, say a tract of land, of three or four acres in front, on the river Mississippi, by forty or eighty acres in depth, situate within three, four, or six miles of the city of New Orleans, on either bank, above or below it, and to erect the buildings of brick, in a style of taste and elegance, of great solidity, (as they are intended to stand for ages,) airy, and of proportionate elevations. They, the commissioners, (to be named as aforesaid,) are permitted, however, at any time, (when they have money on hand, or stocks of this fund,) when opportunities offer of making good investments of it in real estate (say lots of ground, and houses and lots of ground, situated in the city of New Orleans, or its suburbs, yielding rents, or likely to yield rents,) to invest such parts thereof as they think proper (such purchases, however, to be approved by the mayor and city councils of the city of New Orleans) in such real estate; and, also, when an opportunity offers of acquiring such a tract of land as will be wanted for the institution (at a cheap rate) to purchase it. And as I believe our climate and soil well adapted to the cultivation of the mulberry tree, and the rearing of the silk worm, such a tract of land as I recommend the purchase of, if planted with mulberry, and the cultivation of silk undertaken, which is a very light employment, well suited to the weak and aged, would, I have no doubt, yield an annual revenue to the institution, which would go far towards paying the expenses for its support; I therefore earnestly recommend its trial to the commissioners. I also recommend to the commissioners to apply to the legislature of the State for an act to incorporate said institution; (subject always, however, be it understood, to the conditions herein provided for.)

Thirdly. I give and bequeath to the "Society for the relief of destitute Orphan Boys" of the city of New Orleans, in the State of Louisi-

ana, (of which institution Beverly Chew was president on the 28th day of April last, 1838,) for the express and sole purpose (and of no other) of being invested in the purchase of real estate, say lots of ground and houses, and lots of ground, situate in the city of New Orleans and its suburbs, from which a perpetual revenue from the rents of said real estate may be drawn for the support of said institution, an annuity of the one-eighth part (or twelve and a half per cent.) off the nett yearly revenue of rents of the whole of the general estate, as herein before willed and bequeathed, to the mayors, aldermen, and inhabitants of the cities of New Orleans, in the State of Louisiana, and of Baltimore, in the State of Maryland; which annuity of the one-eighth part of the nett revenue of rents, as above stated, shall be set apart yearly, or half yearly, by the commissioners and agents of the general estate, (to be appointed as hereinafter set forth,) and deposited in some one or more of the banks in the city of New Orleans, which pay an interest on money deposited with them, until such time as said annuity shall amount to the sum of four hundred thousand dollars, (exclusive of any interest which may have accrued on it,) when it shall cease, and be no longer paid. And as the said fund of four hundred thousand dollars accumulates in bank, the directors of the said "Society for the relief of destitute Orphan Boys," assisted by the Mayor and Aldermen of the City of New Orleans, who (the said mayor and aldermen) shall approve of the purchases of real estate, and become parties to the deeds of which it is required, may, from time to time, (as good purchases offer,) invest it in purchases of real estate, (as afore stated,) lots and houses, and lots of ground, laying within the city of New Orleans and its suburbs, yielding rents, or likely to yield rents, and to increase greatly in value; which real estate, once acquired, shall never thereafter be alienated or sold by said institution, but shall forever be retained and held by it, and remain its property. The title deeds of purchase, by which said institution shall acquire said real estate, shall set forth that it is made from funds of this bequest, and that said real estate cannot be sold or alienated by said "Society for the relief of destitute Orphan Boys." The funds, (when accumulated,) as wanted for the payment of the real estate when purchased, (but for no other purpose,) shall be drawn from bank by the commissioners and agents of the general estate, and paid over to the directors of said Society for the relief of destitute Orphan Boys and the Mayor and Aldermen of the City of New Orleans.

I recommend to the directors of the Society for the relief of the destitute Orphan Boys to keep such houses as may be purchased or built with the funds from this bequest regularly insured against all risk by fire, by which means, in case of accident, they would have the means to reconstruct them.

Fourthly. I give and bequeath to the Mayor, Aldermen, and Inhabitants of the City of Baltimore, in the State of Maryland, and their successors forever, for the express and sole purpose of establishing a school farm on an extensive scale for the destitute and the poor-

est of the poor male children and youth; say, firstly, of the city of Baltimore, in the State of Maryland; secondly, of every town and village of said State; and, thirdly, of all the great maritime cities of the United States—say New York, New Orleans, Philadelphia, Boston, Charleston, Savannah, Providence, Salem, &c., &c.—of all castes of color, from the age of four years to that of sixteen years; where they shall be sheltered, lodged, clothed, fed, instructed in the Christian religion, and a plain English education given them, including reading, writing, arithmetic, history, geography, &c., &c., and taught practically (by making them labor) the art of husbandry or farming, in all its parts and details, as well as the science generally of agriculture, under such regulations as the directors (to be appointed as hereinafter set forth) of said school farm shall establish; always understood and provided, however, that the volume of the Holy Bible shall be at all times and forever made use of in the school or schools of this institution as one (and the principal one) of the reading or class books which shall be used by the pupils therein; as the first object of every school, and of all teaching of the youth of our country, should be to implant in their minds a knowledge of their duty to God, and the relation of men to their divine Creator; and that singing classes shall be established and forever supported, and singing taught as a regular branch of education in said schools, by which means every pupil will acquire the rudiments of the art, and obtain a knowledge in singing divine psalmody, or sacred music.

An annuity of one-eighth part (or twelve and a half per cent.) of the nett yearly revenue of rents of the whole of the general estate, as herein before willed and bequeathed, unto the mayors, aldermen, and inhabitants of the cities of New Orleans, in the State of Louisiana, and of Baltimore, in the State of Maryland, and their successors forever; the said annuity to be paid yearly, or half-yearly, until such time as the said one-eighth part of the said nett yearly revenue of rents of said general estate shall amount to the full and entire sum of three millions of dollars, when it shall cease and be no longer paid. But with the declared and well understood condition, (for the purpose of paying off this the fourth annuity in as short a space of time as possible,) that as any one, and all three, of the first aforementioned annuities are filled and paid off, or the time expires, (as in the annuity to the American Colonization Society, for colonizing the free people of color of the United States,) during which said annuity is to be paid, that then, from said periods respectively, (say the periods from which the said three foregoing annuities shall respectively be paid off, or expire,) the proportions of nett yearly revenue of rents of the general estate, which were payable respectively under them the said annuities, shall go to, and be paid to, this, the fourth and last annuity, under this my last will and testament, bequeathed to the Mayor, Aldermen, and Inhabitants of the city of Baltimore, in the State of Maryland, and their successors, forever, for the purpose of establishing a school farm; as also any surplus, should it so occur, within the forty years that I have

willed an annuity of the one-eighth part, or twelve and a half per cent., of the nett yearly revenue of rents of the general estate, to the "American Colonization Society, for colonizing the free people of color of the United States," above the sum of twenty-five thousand dollars, which said society is authorized to receive in any one year, and no more; by which means the said Mayor, Aldermen, and Inhabitants of the city of Baltimore, in the State of Maryland, and their successors, for the purpose of establishing a school farm, will, under this, the fourth annuity, receive, at one period, a proportion of said nett yearly revenue of rents of the general estate, of the one-eighth part, or twelve and a half per cent.; at another period, of the one-fourth part, or twenty-five per cent., or more; at another period, of the three-eighths part, or thirty-seven and a half per cent., or more; and at another period, of the one-half part, or fifty per cent., of said nett yearly revenue of rents of the general estate, until they shall have received, under said annuity, the full amount of three millions of dollars.

And the Mayor, Aldermen, and Inhabitants of the city of New Orleans, in the State of Louisiana, and the Mayor, Aldermen, and Inhabitants of the city of Baltimore, in the State of Maryland, for the establishment and support of free schools in said cities, and their respective suburbs, will receive the one-half of the nett yearly revenue of rents of the general estate, and no more, until such time as the whole of the four annuities, as set forth herein, shall be paid off; from which period, (the time when all four of said annuities shall be paid off,) they, the said two cities, of New Orleans, in the State of Louisiana, and Baltimore, in the State of Maryland, will receive and divide equally between them as herein set forth, and for the purpose as aforesaid, the whole of the nett yearly revenue of rents of the general estate to the end of time. And for the purpose of carrying this my desire and intent into effect, I request, authorize, and empower the mayor and city council of the city of Baltimore, in the State of Maryland, on the first Monday of January, of every year, to elect one respectable citizen out of each ward of said city and its suburbs, but who shall not exceed seven in number, nor be members of the said city council at the time, who shall be directors therein; which directors, so elected, shall serve for the term of twelve months, and until a new election, on the first Monday of January of the following year, shall be made by the said mayor and city council, of directors to replace those of the preceding year, (none of whom shall be eligible as directors for two consecutive years,) and so on from year to year, forever; and said directors, elected as aforesaid, shall have the management of said institution, its funds, and every thing in relation to it; (the mayor and city council of the city of Baltimore having, however, the general supervision thereof, and to whom the directors are liable for the faithful performance of their duty therein; and to whom, annually, or going out of office, they must render accounts of their administration, showing particularly its receipts and expenditures, state of its funds, its real estate, and every thing in

relation to and concerning said institution; which accounts must be audited by the said mayor and city councils, through a committee from their body appointed for the purpose, and who will publish them yearly in two of the public newspapers printed in the said city of Baltimore.)

The said directors, to be elected as aforesaid, will receive annually, or semi-annually, the amount of the annuity, until such time as they shall have received, according to this bequest, the whole amount of it, say the sum of three millions of dollars; and as they receive it they shall invest it in bank stock, or other good securities, on landed estate, on interest, so as to augment the amount thereof, by the accumulation of interest, to the largest possible sum, up to the time when the last of the annuity shall be received by them; at which time (when the last of the annuity shall be received) it is my desire, and I request and instruct said directors to take such part of said sum, not to exceed, however, the one-sixth part of the whole amount of principal and interest which may have been accrued thereon, as may be necessary, and invest it in the purchase of such a tract or tracts of land, and in the erection of such buildings, as will be appropriate to the object intended and wanting, and in the furnishing of said buildings (when completed) and lands in all necessary furniture, beds, bedding, animals, plows, harrows, hoes, spades, and other articles; and the residue of said sum, the whole of the residue thereof, whatever it may be, but which shall be at least the five-sixths, or five parts out of six parts, of the whole amount of principal and interest, I direct to be invested in the purchase of real estate, say lots of ground and houses, and lots of ground, situate in the city, suburbs, and vicinage of Baltimore, in the State of Maryland, or tracts of land in its immediate neighborhood, viz., such lots or lands, to be all purchased under fee simple titles, as will probably greatly augment in value. Which real estate, when purchased, shall never be sold or alienated, but shall be held and remain forever the property of the institution, for the purpose of deriving therefrom a permanent and perpetual revenue, a revenue from rents of real estate, not from interest on money loaned or stocks, for the support of said institution forever. As no part of the principal sum, or the interest which may accrue thereon, shall ever be taken for the support of the institution, my intention being that its support shall be supplied exclusively from the revenue, in rents of its real estate, and the revenue derivable from its farm. The houses to be leased for no longer a time than twelve months at any one time; the lots of ground and lands for five, ten, fifteen, twenty, or twenty-five years; but in no instance for a longer time than twenty-five years, at any one time, revertible back, at the end of the time for which they may be leased, with all the improvements on them, said improvements to be free of costs to the lessor; to be released for shorter periods and at higher rates, by which means the rich, or those who are in easy circumstances, will be made to assist in some measure in the support and education of the poor. They, the directors to be elected as aforesaid, are permitted, however, at any time, when they have money on hand or stocks of this

fund, when opportunities offer of making good investments of it in real estate, say lots of ground, or houses and lots of ground, situate in the city of Baltimore, its suburbs, or vicinage, or tracts of land in its immediate neighborhood, yielding rents, or which may be made to yield rents, to invest such parts thereof as they think proper, such purchase to be approved by the mayor and city council of the city of Baltimore, in such real estate; and also, when an opportunity or opportunities offer of acquiring such a tract or tracts of land as will be wanted for the institution for the establishment of its farm, at cheaper rates, to purchase them.

The houses yielding revenue, as also those of the schools' farm, I recommend and direct to be kept constantly insured against the risk of fire, so that if an accident should occur there would be means to reconstruct them. I recommend also to the directors, to be elected as aforesaid, to apply to the legislature of the State of Maryland for an act of incorporation for said institution; subject always, however, be it understood, to the conditions herein provided for. And for the purpose of setting forth, and explaining more particularly and fully, if possible, my intention and desires in relation to this institution, I will add, that the object I have in view, and which occupies my whole soul, my desires, and my affections, in founding this institution, is the great one of rescuing from ignorance and idleness, and, of a consequence, from vice and ignominy, millions upon millions of the destitute youth of the large cities of the United States, and the bringing them up in knowledge and virtue, to industry and labor, to such an age, as (their principles being fixed and stable) they can be apprenticed out to worthy and honorable men for the acquirement of the various mechanical arts, and by that means formed to be useful, and saved to their country and the world.

For that the neglect of education in early life, (permitting children to live and grow up in idleness and ignorance, is the most fruitful source of crime, none will deny. If communities, therefore, would carefully guard that no children grow up without education and employment, and provide a home for the orphan and the offspring of the vicious, and of those who not only neglect to educate their children, but contaminate them by their own bad example, they will do much, very much towards drying up the fountains of vice and of lessening crime. It is not, however, the intellectual cultivation of youth alone which should be attended to, but their moral, physical, and religious cultivation should in a superior degree occupy our especial care. In accordance, then, with this object, it is my desire, and I request the directors, to be elected as aforesaid, to purchase a tract or tracts of rich and productive land, so that its product may assist, at least, to support the institution, in a situation high and healthy for the establishment of the institution, to contain some three hundred, four hundred, five hundred, a thousand, two or three thousand acres, more or less, as may be wanted, laying within one, two, three, five, ten, or twenty miles, or even a greater distance, of the city of Baltimore, as the directors may determine, whereon, un-

der such regulations as the directors, to be elected as aforesaid, shall establish. The said youth shall labor in all work appertaining to the cultivation of the earth; say, in plowing, hoeing, harrowing, spading, mowing, reaping, gathering, housing, thrashing, sowing, planting, gardening, carting, wagoning, making of all agricultural instruments, rearing and attending to animals, rearing and attending to the silk-worm and the mulberry tree, &c., &c., &c., &c., at the same time that they are progressing in their education, until such a period as they attain the proper age; when, their education completed, they shall be apprenticed out for the acquirement of the various mechanical trades. It is my desire, and I request the directors, to be elected as aforesaid, to rear up to labor, educate, and support, in said institution, as great a number of the poor and destitute male children and youths of the different maritime cities of the United States, which are too generally hot-beds of vice, taking those first which belong to the city of Baltimore, then those from the towns and villages of the State of Maryland; and, thirdly, those from the different large cities of the different States of our happy Union; paying the expenses of their removal from their homes to the institution, as the revenue of rents arising from the real estate of this bequest and from the farm will support, which I hope will be at least to the number of one to two thousand; and in time I hope, with wise management, may be made to support ten thousand. It is my wish and desire, and I request the directors, to be elected as aforesaid, to erect the buildings of the institution in stone or brick, in a style of taste and elegance, but plain, of great solidity, intended to stand for ages, airy and of proportionate elevations. In closing these my explanations and desires in relation to this, the institution of the "school farm," it will be permitted me to express my conviction that this institution will not long remain the only one of the kind in the vicinity of that noble, philanthropic, and high-minded city, but that a sister one will soon be made to spring up by its humane and generous sons, an offering on the altar of charity, destined to rescue from *the* ignorance and vice the female children and youth of the poor, the destitute, and vicious of our country.

And for the management of the general estate or fund for the education of the poor which I have herein willed and bequeathed to the Mayor, Aldermen, and Inhabitants of the city of New Orleans, in the State of Louisiana, and the Mayor, Aldermen and Inhabitants of the city of Baltimore, in the State of Maryland, and their successors, forever, I hereby declare that my intention is not that any part of said general estate, or revenue from rents arising from said general estate, shall go into the hands of the corporations of said cities, but that they, the said corporations, shall forever have a supervision over it. I therefore, in consequence, request, authorize, and direct the respective city councils of the three municipalities of the city of New Orleans, on the first Monday of January of each and every year, to elect one respectable citizen out of each of said municipalities, who shall be a resident therein, but who shall not be members of said city councils at the time, who shall be commissioners of the general estate; which three commis-

sioners so elected shall serve for the term of twelve months, and until a new election, on the first Monday of January of the following year, shall be made by the said city councils, of three commissioners to replace those of the preceding year, (none of whom shall be eligible as commissioners for two consecutive years,) and so on, from year to year, to the end of time. And the three commissioners so named, in conjunction with the three agents to be appointed, as hereinafter directed, by the mayor and aldermen of the city of Baltimore, in the State of Maryland, which three agents, so named by the said mayor and aldermen of the said city of Baltimore, shall have equal powers with said three commissioners elected by the city councils of the city of New Orleans, and an equal vote on all affairs of business, as they will represent an equal interest, shall have the sole management of said general estate, the leasing and renting of all its lands, lots of ground, houses, &c., &c., the cultivating of its estates, with the black people thereon, (if any estates are in cultivation at the time of my death,) the crops made on which estates, when sold, shall be considered rent; the collecting of its rents, leases, &c.,and the giving receipts therefor; the paying of the annuities as herein before ordered and bequeathed ; and, in fine, doing all acts necessary to its full and perfect management, as herein pointed out and directed. For this purpose they will take an office in some fire-proof house in the city of New Orleans, employ a confidential clerk or secretary, and keep regular books, accounts, &c., &c.

They, the said commissioners and agents of my general estate, to be named as herein before and hereinafter provided for, are hereby permitted, directed, and authorized by me, if they should see fit and proper so to do, at such time as the fifteen years are near expiring, during which the slaves are to labor for my general estate after my death, before being sent to Africa, to take the nett amount of two or three crops of such estates as they are cultivating, and purchase therewith an equal number of slaves (if there is still slaves in our country for sale) with those they are about to send away; which slaves, so purchased, shall labor on the plantations belonging to the general estate for fifteen years from the day of their purchase, and after said fifteen years of service, be also in their turn sent to Africa, and their number may be again renewed by purchase in the same mode and manner, serve also fifteen years, and be sent to Africa; and so on, as often as the commissioners and agents of the general estate may see fit and proper, and that there is slaves to be purchased; by which means a two-fold object would be accomplished, viz., a revenue from the estates cultivated greater than what they would yield by renting them out, and the returning, every fifteen years, an additional number of the human race, christianized and civilized, to the land of their forefathers. My executors, herein after named, will hand over to said commissioners and agents of the general estate of the city of New Orleans and of the city of Baltimore, all the title deeds of my real estate, with all other papers and documents not necessary to them, the said executors, to be deposited in said office.

They, the commissioners of the general estate of the city of New Orleans, and agents of the general estate of the city of Baltimore, to consider themselves at once in possession, as I hereby give them seisin and put them in possession, of all said real estate from the day of their nomination; which nomination I recommend the city councils of the city of New Orleans and the Mayor and Aldermen of the city of Baltimore, to make immediately after my decease. And on the settlement and winding up of my affairs by them, the executors hereinafter named, they will place all my books of accounts, papers, &c., &c., in the hands of the commissioners and agents of the general estate to be named by the city councils of the city of New Orleans, and the Mayor and Aldermen of the city of Baltimore, to be placed in said office for safe-keeping. And at the end of each year, or half year, as may be thought best, after the payment of the different annuities and all other attending expenses, the commissioners appointed by the city councils of the city of New Orleans, and the agents representing the Mayor, Aldermen, and inhabitants of the city of Baltimore, will settle their accounts, each party dividing and taking one-half of the remaining nett revenue of the year for the intents and purposes as herein before and hereinafter ordered and directed. The agents representing the city of Baltimore will remit the amount received by them to the commissioners named in Baltimore, and the commissioners elected by the city of New Orleans will receive the proportion accruing to the said city of New Orleans, carry it to the account of the public free schools' fund in one of the banks in the city of New Orleans, and keep separate books and accounts for said fund, and of every thing in relation to public free schools. The management of the public free schools in the city of New Orleans and its suburbs, and the fund belonging to said schools, the agents of the city of Baltimore have no power over, or concern in. Certified copies of the accounts of the general estate fund shall be forwarded to the corporation of the city of Baltimore annually, to be examined by it, and published in two of the newspapers of that city; and the corporation of the city of Baltimore shall also publish, in two of the newspapers of said city annually, a copy of the accounts of the free schools' fund, its disbursement and state, with a statement of every thing relative to said free schools. Copies, also, of the accounts of the general estate fund shall be delivered to the city councils of the city of New Orleans, who shall name a committee from their own body to visit the books, examine and audit the said accounts annually, and at all other times when they may think proper, as well the accounts of the general estate as of the free schools' fund, and keep up and support a general supervision over the general estate, its accounts, funds, management, and real estate, as also over the free schools, and every thing that relates to them. The annual accounts, as well of the general estate as of the free schools' fund, shall be published in two of the newspapers of the city of New Orleans yearly, with a particular statement of the situation of the schools, and every thing concerning them.

It is my wish, and I direct the commissioners for the city of New Orleans, to be named as herein before and hereinafter set forth, to establish as many schools as may be necessary and wanted, so that, if possible, every poor child and youth may receive an education. The schools should be established in different parts of the city of New Orleans, its suburbs, liberties, and outskirts, in such situations as would be nearest the residences of the poorer classes, for whom those institutions are alone intended. They will invest such part of the fund as will annually accrue to the Mayor, Aldermen, and Inhabitants of the city of New Orleans from the revenue and rents of the general estate as will be necessary, in the purchase of suitable lots of ground, and the erection of proper and permanent buildings in brick, for the schools and places of residence for the teachers, and the residue of the fund will be made use of for the payment of teachers, for books, stationery, and other attendant and necessary expenses.

And I request, authorize, and direct the respective city councils of the three municipalities of the city of New Orleans, on the second Monday of January of each and every year, to elect two other respectable citizens as commissioners, out of each of said three municipalities, who shall be resident in said respective municipalities from which they shall be elected, (but who shall not be members of said city councils at the time,) which will be six commissioners; and with the three commissioners, to be elected by the said respective city councils of the three municipalities of the city of New Orleans, on the first Monday of January of each and every year, (as herein before provided for,) will make nine commissioners in all, who shall be commissioners for this purpose; which commissioners, so elected, shall serve for the term of twelve months, and until a new election, on the second Monday of January of the following year, shall be made by the said city councils of the three municipalities of the city of New Orleans of commissioners, to replace those of the preceding year, (none of whom shall be eligible as commissioners for two consecutive years,) and so on, from year to year, to the end of time.

And the said six commissioners (to be named as aforesaid) shall have equal powers in the management of the free schools' fund, (which will accrue to the Mayor, Aldermen, and Inhabitants of the city of New Orleans, in the State of Louisiana, annually, from the revenue of rents of the general estate,) the schools established under it, and every thing in relation to it, with the three commissioners to be named (as herein before provided for) by the said city councils of the three municipalities of the city of New Orleans, on the first Monday of January of each and every year. But they, the said six commissioners (to be named as aforesaid by the said city councils of the three municipalities of the city of New Orleans, on the second Monday of January of each and every year) shall have no power, concern, or management in the affairs of the general estate; as the affairs of the said general estate are to be managed, transacted, and conducted solely and exclusively as herein before and hereinafter provided for by the three commissioners

to be named, on the first Monday of January of each and every year by the city councils of the three municipalities of the city of New Orleans, in the State of Louisiana, and the three agents to be named by the Mayor and Aldermen of the city of Baltimore, in the State of Maryland, and by them only.

And I request, authorize, and direct the mayor and aldermen of the city of Baltimore, in the State of Maryland, on the first Monday of January, of each and every year, to elect one respectable citizen out of each ward of said city, its suburbs, liberties, and outskirts, but who shall not exceed nine in number, nor be members of said city council at the time, who shall be commissioners for this purpose; which commissioners, so elected, shall serve for the term of twelve months, and until a new election, on the first Monday of January of the following year, shall be made by the said mayor and aldermen of commissioners, to replace those of the preceding year, (none of whom shall be eligible as commissioners for two consecutive years,) and so on, from year to year, to the end of time; and the said commissioners (named as aforesaid) will take an office in some part of the city of Baltimore, employ a confidential clerk or secretary, and keep regular books and accounts, showing the application and disbursement of all sums of money which will come into their hands from the agents appointed by the Mayor and Aldermen of the city of Baltimore (in manner as hereinafter set forth) to represent their interest in the city of New Orleans, and to receive and remit it to them; and the said commissioners, to be named as herein before provided, will establish as many schools as may be necessary and wanted, so that, if possible, every poor child and youth may receive an education. The schools should be established in different parts of the said city of Baltimore, its suburbs, liberties, and outskirts, in such situations as will be nearest the residence of the poorer classes, for whom those institutions are alone intended. They, the said commissioners, will invest such part of the fund as will annually accrue to the Mayor, Aldermen, and Inhabitants of the city of Baltimore, from the revenue of rents of the general estate, as will be necessary in the purchase of suitable lots of ground, and the erection of proper and permanent buildings in brick or stone for the schools, and places of residence for the teachers; and the residue of the fund will be made use of (as far as wanted therefor) for the payment of the teachers, for books, stationery, and other attendant and necessary expenses. The mayor and aldermen of the city of Baltimore will appoint, annually, (or as often as they see fit or proper,) a committee from their own body, to visit the books and accounts kept by said commissioners of the free school fund, to examine and audit said accounts; and will keep up and support a general supervision over the said schools, their management, expenditures, funds, and every thing that relates to them.

And for the purpose of managing the affairs of the general estate or fund in the State of Louisiana, in which the city of Baltimore is equally interested with the city of New Orleans, I hereby authorize and direct the mayor and aldermen of the city of Baltimore, in the State of Ma-

ryland, to elect, appoint, and name, from time to time, as they may see fit and proper, and to change them, and name, elect, and appoint, others in their lieu and place at any time they may see fit and proper, three persons as agents in the city of New Orleans, or whom they may send to said city of New Orleans, to represent their interest in said general estate, and to act for them in all respects, and in all things which concern said general estate; which said three agents shall, jointly, with the three commissioners to be appointed by the city councils of the city of New Orleans, manage, conduct, and administer in all respects said general estate as herein before and hereinafter provided for and set forth; and shall have equal power and an equal vote, (in all affairs which concern said general estate,) with the said three commissioners to be appointed, as herein before provided for, by the city councils of the city of New Orleans. I recommend to the commissioners to be appointed by the city councils of the city of New Orleans, and the agents to be appointed by the mayor and aldermen of the city of Baltimore, to represent their respective interests in the general estate in the city of New Orleans, to keep all such houses and buildings as belong to the general estate, or may hereafter belong to it, regularly insured against all risk by fire; by which means, in case any of said houses or buildings shall be destroyed by said element, the means would be ready to reconstruct them; and to apply to the legislature of the State of Louisiana for an act of incorporation, (subject always, however, to the conditions provided herein,) of said general estate.

I also recommend to the commissioners, (to be elected as herein before provided for,) as well those of the city of New Orleans as those of the city of Baltimore, charged with the management of the free schools' fund of said respective cities, to apply to the legislatures of their respective States for acts of incorporation for their respective free school institutions, (subject always, however, to the conditions provided herein,) should it be found necessary and desirable to have said institutions incorporated.

No compromise shall ever take place between the Mayor, Aldermen, and Inhabitants of the city of Baltimore, in the State of Maryland, and the Mayor, Aldermen, and Inhabitants of the city of New Orleans, in the State of Louisiana, and their successors, in relation to their respective rights in said general estate; nor shall one party receive from the other party, by agreement, a certain sum of money, annually or otherwise, for their respective proportions in said general estate; nor shall either party sell their respective rights under this will in the said general estate to one another or to others; but said general estate shall forever remain and be managed as I have herein pointed out, ordered, and directed. And should the mayor and aldermen of the city of Baltimore, in the State of Maryland, and the mayor and aldermen of the city of New Orleans, in the State of Louisiana, or their successors in office, combine together, and knowingly and wilfully violate any of the conditions herein before and hereinafter directed for the management of the general estate, and the application of the revenue arising therefrom,

then, in that event, I give and bequeath the rest, residue, remainder, and accumulations of my said general estate, (subject always, however, to the payment of the aforementioned annuities,) to the States of Louisiana and of Maryland, in equal proportions to each of said States, of half and half, for the purpose of educating the poor of said States, under such a general system of education as their respective legislatures shall establish by law; always understood and provided, however, that the real estate thus destined by me for said purpose of education, shall never be sold or alienated, but shall be kept and managed as they, the said legislatures of said States, shall establish by law, as a fund, yielding rents, forever; the rents only of which general estate shall be taken and expended for said purpose of educating the poor of said respective States, and for no other. And it is furthermore my wish and desire, and I hereby will, that in case there should be a lapse of both the legacies to the cities, of New Orleans, in the State of Louisiana, and Balimore, in the State of Maryland, or either of them, wholly or in part, by refusal to accept, or any other cause or means whatsoever, then both or either of said legacies, wholly or partially so lapsed, shall inure, as far as it relates to the city of New Orleans, to the State of Louisiana, and as far as it relates to the city of Baltimore, to the State of Maryland, that the legislatures of those States respectively may carry my intentions, as expressed and set forth in this my last will and testament, into effect, as far, and in the manner, which will appear to them the most proper.

It will be permitted me here to observe, that I am, and long have been, convinced, that the first, most imperative, and sacred duty, which each and every government on earth is bound to perform, (and which rulers and legislatures cannot avoid the performance of, but under the heaviest responsibilities to Heaven,) is that of providing by law for the education of every child within the limits of their respective governments. To that effect, parents and guardians of youths should be made, under heavy penalties, to send their children to schools, supported under a system of general taxation on real estate, at the sole expense of the government. Now, with the view of setting forth, and explaining more fully and particularly, if it is possible, my desires and intentions, as expressed in the foregoing dispositions of this my last will and testament, in relation to my general estate, I will add, that the first, principal, and chief object I have at heart, (the object which has actuated and filled my soul, from early boyhood, with a desire to acquire fortune,) is the education of the poor, without the cost of a cent to them, in the cities of New Orleans and Baltimore, and their respective suburbs, in such a manner that every poor child and youth, of every color, in these places may receive a common English education; based, however, be it particularly understood, on a moral and religious one; that is, the pupils shall, on particular days, be instructed in morality and religion, and school shall be opened and closed daily, with prayer. And in time, when the general estate will yield the necessary funds (for in time its revenue will be very large)

over and above what will be necessary to the education of the poor of those two cities and their respective suburbs it, is my desire, and I request, that the blessings of education may be extended to the poor, throughout every town, village, and hamlet in the respective States of Louisiana and Maryland; and *was* it possible, through the whole of the United States of America. For this purpose, and this only, my desire being that one dollar shall never be expended to any other purpose, I destine the whole of my general estate, (excepting only my black people, the legacy bequeathed the children of my sister Jane, and that to herself,) to form a fund, in real estate, which shall never be sold or alienated, but be held and remain forever sacred to it alone. The nett annual revenue of rents of said general estate to be equally divided (one have to each) between the said two cities of New Orleans and Baltimore, so soon as the annuities are paid off which I have charged the general estate or fund to pay; the last of which annuities will probably be paid off in forty or fifty years from and after my death; from which period, the time when said annuities will be paid off, the whole revenue of rents arising from said general estate or fund will be received for the sole purpose of educating the poor, as I have herein before set forth; and in the mean time (the time between the period of my death and the period when said annuities will be paid off in totality) the one-half of the revenue of rents arising from said general estate or fund is destined to said purpose. In the course of my observations through a long life, having seen almost every bequest or endowment of the nature of those I have herein made perverted, after a certain lapse of time, from their intended purposes, and either sold or so changed as to serve other and private ends; I determined, therefore, in consequence, by placing one city and its agents or representatives as a check over the other, to guard by that means the interests of both. This arrangement, I hope, will become the means of carrying down to the latest time this bequest, and secure its application forever to the purposes intended by me. It would have been an easy matter for me to have purchased real estate in the city of Baltimore for the one-half of the amount of my estate; but then, *and* I so done, my object would not have been accomplished; the danger of its alienation, and having it turned aside from its original intent, would have existed in full force. To avoid which I placed the whole of it in one city and State, and made another city and State equally interested in its preservation and correct management, for the mutual benefit and security of both.

I trust the Most High will bless the intention, and render it effectual. The mode I thus adopted will also serve, I trust, as a ligature (though but a small one) to bind the different parts of our country together; and should it be found on trial to work well, may induce other well-wishers of their species, and the institutions of our common country, to do the same, and thereby bind together other cities and States of our greatly blessed and happy country in brotherly affection and love to the latest time. I have also long seen with regret that a spirit inimical to the rich is felt and entertained by the poor, nurtured and kept alive

in their bosoms, as it is, by designing and bad men for their own wicked purposes. They are told that the rich are their natural enemies; that the God of nature made all men equal, and that it is sinful for one man to appropriate to himself more of the riches of this world than his neighbor; with much more to the same purport. Believe it not, my friends; be assured that they who tell you so are your greatest enemies; the enemies of your peace and happiness. Those feelings of jealousy which the poor entertain of the rich is wrong; it is sinful, and contrary to the laws of our divine Creator, who has shown in his works (as in his words) that he did not intend a perfect equality to exist among men. As he has not made all men equal in strength, in stature, or intellect, neither has his decrees established an equality of fortune. Let man then bow with humble resignation to the divine will. The poor should look on the rich in the light in which they really and truly stand towards them; that is, as reservoirs, in which the Most High makes to flow the rich streams of his beneficence, to be laid up and husbanded for his all-wise and all-seeing purposes, and for seasons of distress and affliction to the poor.

Instead, then, of looking on them as their greatest enemies, they should, on the contrary, consider them as they really are, their best friends. This is the position all rich men, (whose hearts occupy the right place in their bosoms) stand in towards the poor. Besides, let the poorer classes of the world be consoled, assured, that the labor-loving, frugal, industrious, and virtuous among them, possess joys and happiness in this life which the rich know not, and cannot appreciate. So well convinced am I (after a long life and intercourse with my fellow men of all classes) of the truth, "that the happiness of this life is altogether on the side of the virtuous and industrious poor," that had I children, (which I have not,) and a fortune to leave behind me at death, I would bequeath (after a virtuous education, to effect which nothing should be spared) a very small amount to each, merely sufficient to excite them to habits of industry and frugality, and no more. As the poor man's friend, then, I recommend to him to honor and respect the virtuous rich, and to lay those observations to their heart, and to store them up in their mind. And to the rich I would say, (if they see aught in them corresponding with their own feelings, and worthy of their regard,) "give them an occasional reflection." Hoping thereby that the world may advance in happiness, in virtue, and holiness, I request my executors (hereinafter named) to see that my funeral is plain, made without parade, and with the least possible expenses. And (I was near forgetting that) I have still one small request to make, one little favor still to ask, and it shall be the last: it is, that it may be permitted annually to the children of the free schools, (situate the nearest to the place of my interment,) to plant and water a few flowers around my grave.

This little act will have a double tendency. It will open their young and susceptible hearts to gratitude and love to their divine Creator, for having raised up, as the humble instrument of his bounty to them, a

poor frail worm of earth like me; and teach them at the same time, "what they are, whither they came, and whence they must return."

And to enable my executors (hereinafter named) to execute this my last will and testament, I hereto give unto them seizin of all my personal estate, money, stocks, and bonds on hand, as well as all debts owing to me by bills, notes, bonds, and mortgages, deeds, or books' accounts, as also the furniture and effects in and about the house in which I reside, cattle, horses, &c., &c., putting them in possession thereof, and authorizing them, my said executors, (hereinafter named,) to recover and receive the amount of all said stocks, bonds, bills, notes, bonds and mortgages, deeds, book accounts, &c., &c., with all dividends and interest which may accrue thereon, and to sell said furniture and effects; and likewise to pay all debts owing by my estate to others, should there be any debts owing by it. In the different acts of incorporation contemplated and mentioned by me in this my last will and testament, to be passed by the legislatures of the States of Louisiana and Maryland, for the purpose of carrying out the objects I have in view, it is my wish and desire, *shall* that there be an express provision in each of said acts of incorporation, prohibiting the administrators or officers of the respective corporations from ever selling or alienating, in any manner whatever, the real estate acquired in any way, either by purchase (by means of the funds arising from and received under this will and testament) or otherways, and held and owned by said corporations. Finally, I nominate and appoint Christian Roselius, Judah Touro, Abial Dailey Crossman, Lewis Philip Pilié, Jonathan Montgomery, Joseph A. Maybin, William E. Leverich, and François Bizoton D'Aquin, (all eight of the city of New Orleans, in the State of Louisiana;) Benjamin C. Howard, John P. Kennedy, John Spear Smith, Brantz Mayer, Henry Didier, (merchant,) and John Gibson, son of the late William Gibson, clerk of the court, (all six of the city of Baltimore, in the State of Maryland;) Henry Clay, of the State of Kentucky, the present President of the American Colonization Society of the city of Washington, in the District of Columbia; R. R. Gurley, Secretary of the American Colonization Society of the city of Washington, in the District of Columbia; and Walter Lowrie, Secretary of the Board of Foreign Missions of the Presbyterian church of the city of New York, State of New York, executors of this my last will and testament. And in the event of the death of François Bizoton D'Aquin previous to my decease, then I nominate and appoint his brother, François Adolphe D'Aquin, to replace him as an executor of this my last will and testament; and give to said executors, Christian Roselius, Judah Touro, Abial Dailey Crossman, Louis Philip Pilié, Jonathan Montgomery, Joseph A. Maybin, William E. Leverich, François Bizoton D'Aquin, Benjamin C. Howard, John P. Kennedy, John Spear Smith, Brantz Mayer, Henry Didier, John Gibson, Henry Clay, R. R. Gurley, and Walter Lowrie, full powers, without the interference of judicial or extra judicial authority, to carry the same into effect, according to the true intent and meaning thereof; authorizing and empow-

ering, as I hereby do, in the event of absence from the State, refusal to qualify, resignation, or death, of the other executors, any three of the said aforementioned executors to act, and carry out my intentions, under this my last will and testament; recommending to them (my said executors) to see that said intentions are in all respects strictly complied with. And I do hereby revoke and annul all other wills heretofore made by me.

In witness whereof I, the said John McDonogh, have to this my last will and testament, (the whole written, dated, and signed with my own hand,) contained on twenty-four pages, placed my signature at the foot or bottom of each page, and my seal and signature at the foot or bottom of this my last will and testament, on the twenty-fourth page.

This my said last will and testament, (executed from motives of prudence,) in duplicate, in my dwelling-house, in the town of Macdonogh, State of Louisiana, on this the twenty-ninth day of December, in the year of our Lord eighteen hundred and thirty-eight (1838.)

(Signed,) JOHN McDONOGH. [SEAL.]

Ne varietur, 28th October, 1850.

(Signed,) A. M. B., *Judge.*

*Envelope.*

"This envelope contains my olographic will," 2dly.

(Signed,) "JOHN McDONOGH."

"Macdonogh, opposite New Orleans, December 29th, 1838."

Filed October 28th, 1850.

STATE OF LOUISIANA,
*Fifth district court of New Orleans.*

I, Prosper Le Blanc, clerk of the fifth district court of New Orleans, do hereby certify, that the above and foregoing thirty-one pages do contain a true copy of the original olographic will of the late John McDonogh, on file and of record in this office, in the matter of the succession of John McDonogh, opened in this court, and now on the records thereof under the number 4,112.

Eight words erased, null; and two words interlined, approved.

In testimony whereof I have hereunto set my hand and affix the seal of the said court, at the city of New Orleans, the fourth day
[L. S.] of November, in the year of our Lord one thousand eight hundred and fifty, and in the seventy-fifth year of the independence of the United States of America.

P LE BLANC, *Clerk.*

*Memoranda of instructions to the executors of John McDonogh, to be opened and kept by the executors.*

Memoranda.—Being reflections, opinions, and recommendations addressed by John McDonogh to the executors of his estate named in

his last will and testament, and to the commissioners and agents (to be appointed by the city councils of the city of New Orleans, and the mayor and city councils of the city of Baltimore) of his "general estate." As said memoranda, recommendations, &c., &c., may, he hopes, be of service to them, in various ways, in the winding up of said estate, and in the management of the general estate, he requests they may be copied into one of the books kept in the office of the general estate, for preservation, reference, and use. The inventory of my estate, as directed by my will, to be made out by a notary public, assisted by my executors, must remain on record in the office of said notary public, in his current book of record, from which my executors will be pleased to obtain certified copies, and have them placed, say one copy in the archives of the city councils of the city of New Orleans, one copy in the city council of the city of Baltimore, one copy in the office of the general estate in New Orleans, and another copy in the office of the free schools and the free school fund in the city of Baltimore, in the State of Maryland—all for safekeeping; so that if an accident or accidents should happen to one or more copies of said inventory, other copies thereof would be safe. It will also be copied from those original and certified copies into the books of those institutions of said offices.

And whereas all the land, papers, and title deeds of my real estate, of every kind and nature, will remain and be placed for safekeeping in the office of the general estate in the city of New Orleans, under the care of the commissioners and agents of said general estate, I request said commissioners and agents, as it is most important that all said papers, documents, and title deeds should be carefully preserved, said general estate being deeply interested in their preservation and safekeeping, to have certificate copies taken of each, and every land title paper, many of them being the original title deeds, of which no record or copy exists but those in my possession, and title deed officially—that is, notarial copies of each and every one of them duly certified by the respective notaries public before whom they were originally executed, and then legalized by the governor of the State. And to be still more particular and exact, knowing, as I do, the great importance of the object, I mean a copy of each paper or document, through the whole chain of title up to the originals, and including the originals, from the different governments of France, Spain, and the United States of America, in each, and every title to each, separate piece of property, and said copies on duplicates, of each and every land paper, document, or title deed, a complete set of copies of the whole series of documents or title deeds, to be remitted with the greatest care by some safe private conveyance to the commissioners of the free schools and free schools' fund in the city of Baltimore, in the State of Maryland, to be placed in the office of said institution for preservation and safekeeping; in the event, that should an accident take place in either city, and one set of copies be lost by fire or otherways, that they might be immediately after replaced by another series of copies; so that two sets of

copies may, if possible, forever exist, one set in each city of New Orleans and Baltimore. I request, also, that duplicate copies of all plans of land, and lots, or ground laid out and divided into lots and squares, may be made out and remitted to Baltimore, with full and complete lists of all the property belonging to the general estate, with descriptions of its precise situations, measurements, prospects, value, &c., &c. By which means each office in each city will be in possession of all information relative to said general estate, and of duplicate copies of every document, title deed, plan, &c., &c., appertaining and belonging to said general estate, and which they, the said offices of said institutions, besides having and preserving the original copies, will have copied in each office, in a book kept for the express purpose, as a still further security to their preservation. And whereas, in every thing that will concern the management of the general estate, from the most important of its affairs to the most minute; from the keeping of its books and documents to the leasing and renting of its real estate; from the receiving and collection of said rents to the care and preservation of its estates, houses, &c., &c., and more especially to the gradual increase of its revenue, much, very much, will depend on the honor, probity, wisdom, and business talents and habits of the gentleman who will be appointed its secretary. It will be permitted me, then, to recommend that great care and precaution should be at all times used in the making of this appointment, and no one entrusted with it who did not stand high in the estimation of their fellow-citizens for all those qualifications. Besides, the engagement taken with him, whoever he may be, should only be during good behavior, and satisfaction given by him in all respects in the fulfilment of the duties of the office; and if it should so happen at any time that a gentleman possessing all the necessary qualifications to fill the office could not be met with or obtained here, in the city of New Orleans, that then such a one should be sought for in some other part of the United States, and induced to come here to act as its secretary, under a good salary, for its services.

As it will be very important to have the institution of the general estate incorporated by a law of the legislature of the State, I recommend, in consequence, to the commissioners and agents of the general estate to apply to said body, by memorial, at its first session after their appointment, for the passage of such a law; recommending that said memorial should be given for presentation to some of the most influential members of said body, and their support of it through the respective houses requested. Perhaps the Governor of the State, if spoken to, would make mention of it in his annual message to that body, and recommend the passage of a law for its incorporation, seeing the object and vast importance of the institution to the State and the world. So soon as the law (by the legislature of the State) incorporating the institution of the general estate shall be passed, I recommend to the commissioners and agents of said estate, immediately after, to apply by memorial to said legislature (and to every subsequent legislature, until the demand is accorded) for a law exempting forevet

from taxation all property, real and personal, belonging to said general estate, or which may thereafter belong to it, laying within the State of Louisiana, seeing the purposes to which it is destined.

I trust that the wise and enlightened members, composing the legislature of the State of Louisiana, will not refuse the passage of such a law, seeing that the whole and entire revenue of said estate goes to charitable uses in the State, and to the education of its own citizens; saving, thereby, to the State itself an immense expenditure, which would otherways have to come out of its coffers.

Similar applications to the last recommended above should be made to the different city councils of the city of New Orleans, praying that the real estate laying within the respective limits of the different municipalities, belonging to said general estate, should be exempted forever, by law, from all taxation, seeing the uses to which its revenue is forever destined.

So soon as the law (by the legislature of the State) incorporating the institution of the general estate shall be passed, I recommend the commissioners and agents of said estate immediately thereafter to apply by memorial to said legislature, (and to every subsequent legislature until the demand is accorded,) praying that an act may be passed providing that no prescription shall ever run against any real estate belonging to this estate, which shall be taken possession of or held by others. The object in such a law would be, that whereas much land belonging to this estate lays in various out-parts of this State, persons might, unknowingly to the commissioners and agents of the general estate, seat themselves down on it; and if permitted to remain thereon for thirty years, (the present law of prescription of the State being such,) would acquire title thereby. Such a law would, therefore, protect it forever.

After the passage of the law (by the legislature of the State) incorporating the institution of the general estate, I recommend to the commissioners and agents of said estate to apply by memorial to said legislature, (and to every subsequent legislature until the demand is accorded,) praying that an act may be passed appointing the secretary of the general estate (for the time being, whoever he may be) an auctioneer, for the purpose of leasing, at public auction, the lots of ground and other real estate belonging to said general estate. The object of this would be, that the general estate might have its own confidential auctioneer to transact its business, (as all its leases should be publicly made at auction, after due notice by advertisement in the public newspapers of the city,) and by that means save, also, much expense in commissions, which would otherways have to be paid to auctioneers.

And whereas Mr. Andrew Durnford, a free man of color, of the parish of Plaquemine, of this State, is at this time indebted to me [in] a large sum of money, by mortgage on his sugar estate, situate in said parish; now, should it so happen that, at the time of my death, said debt still remains unliquidated and owing to me, I, in that case, request my executors (he being a worthy and an honest man, and my

friend) to wait the payment of said debt with him, Andrew Durnford, and to give him time to pay it off, on his paying an interest thereon of six per cent. per annum for such time as they shall wait with him the payment thereof. Well understood, however, that the amount of the crop which he will make on his plantation he will annually pay over to them, on account of the principal and interest of said debt, until the whole amount thereof is liquidated and paid off.

And whereas, in my last will and testament, I did not, in relation to my old servants, whose freedom I willed to be given them here in New Orleans, provide any support, as I did not wish to add more writing than I could help, or add to its length, I will now add a request to my executors, that should any of them, from age or weakness, (as they are now all hearty and strong,) stand in need of support, that fifty cents a week may be paid to such of them as become so situated, and that such be permitted to occupy one of the houses they have been accustomed to live in with me, until their decease.

I beg leave to recommend, that when lots of ground are leased on long leases, the lessees should be bound to erect buildings of certain descriptions thereon, with foundations and walls of certain proportions; to raise and fill up the lots with earth; pay all taxes thereon during the term of the lease; comply with and fulfil all municipal requirements; keep all houses and improvements placed thereon insured against risk by fire, &c., &c.; which buildings, with all other improvements placed thereon, once erected, shall not be pulled down by the lessees, but shall revert back, at the end of the lease, with the lot or lots of ground, to the lessors, free of cost or expense to them, the lessors; said houses and lots of ground, after reverting back, at the expiration of the first lease, improved, as they will be, should be rented out on short leases, (the rent payable monthly,) at higher rates; by which means a large revenue will accrue to the estate in a short lapse of time, which must greatly and yearly increase. The mode and manner of leasing should be at public auction, putting up a lot to be bid off at the highest price offered for it, on such and such conditions, (say those of filling up with earth, paying all taxes, complying with all municipal requirements, buildings of certain descriptions and proportions, insurance against fire, to insure the means of rebuilding, in case of accident, &c., &c.,) under a lease of one year, five, ten, fifteen, twenty, or twenty-five years, as the case may be, paying an interest (quarterly or quarter-yearly) at the rate of six, seven, or eight per cent. per annum, as the case may be, on the price of the lot or lots of ground adjudicated.

Public sales should be made of lots of ground on lease in the city of New Orleans, as also in the rear of the city, say on Poydras, Hevia, Perdido, Girond, Freret, Saint Mary, Saint Mark, and other rear streets, as well as in the rear of the suburbs, Livaudais and Washington, above and below the city, as in Macdonough, according to the wants of the public and the demand for them. No large quantity of lots should be thrown into the market at any one time, but the public should be supplied as space was wanted to build on, say a public sale of one hun-

dred, two hundred, or three hundred lots, lots of thirty feet in front each, every two, three, or five years, as wanted, and the prices high—that is to say, fair. However, on reflection, it would be well perhaps to lease out many of the rear lots even at low prices, as the lessees would be improving, filling them up, and giving additional value to them.

And whereas the titles under which I claim and hold certain lands, laying principally in the State of Louisiana, some small part thereof laying on the Pearl river, in the State of Mississippi, and called the Florida grants, which lands are the $\frac{15}{16}$th parts, or fifteen parts out of sixteen parts, of (120,000 arpens) one hundred and twenty thousand arpens, original grantee, Geronimo La Chiapella; the ($\frac{2}{3}$ds) two third parts of (90,000 arpens) ninety thousand arpens, original grantees, Louis and Alexander Declouet; and the ($\frac{1}{3}$rd) one third part of (40,000 arpens) forty thousand arpens, original grantee, Vallery John De Lassise, are as yet unconfirmed by the Government of the United States, although good and valid. To assure therefore their confirmation, I request the two cities of New Orleans and Baltimore, as also the two States of Louisiana and Maryland, through their respective legislatures, to memorialize the General Government, praying it to confirm the titles to said land, seeing that they are the property of the poor of those two cities, a fund for their education; that they are in reality destined to do and accomplish that which is the duty, the first and most sacred of duties, of the General Government itself, to perform, and see performed, namely, to educate its citizens, or otherways to give them, my general estate, their choice of other public lands laying in the State of Louisiana in exchange for them, or in their lieu and place, acre for acre, seeing that the General Government have sold a great many of the lands laying within my surveys, which I trust, and doubt not, the General Government will do, viewing the justice of the claim and the validity of the titles. Indeed, I consider those titles already virtually confirmed by the Supreme Court of the United States, in their decisions in the suits of Foster and Elam vs. Neilson, Arredondo, I believe, vs. the United States, Perchman, I believe, vs. the United States, and others; see also various reports of committees and bills reported in Congress at various times, memorials from the legislature of Louisiana, and especially an able report from the late Edward Livingston, when Secretary of State of the United States, when called on by a resolution of Congress for information on the subject of those claims. Those decisions of the Supreme Court of the United States are to the effect, that the Government of the United States are bound, under the treaty with Spain of 1819, to confirm said titles.

The Supreme Court not being competent to come to the relief of the claimants, it requiring the action of the General Government in the first place, it being a political question as to limits, the citizens of Louisiana have cause to complain of the injustice of the General Government, on the subject of our land claims and titles, the great, the crying injustice, and none more than myself. From the treaty of

Paris of 1803, by which the United States acquired the province of Louisiana, down to the present day, now thirty-six years, our land titles remain unsettled and unadjusted. Had Congress passed a law within a week after the ratification of said treaty, as they were bound to do, both by its letter and spirit, confirming every title to land within the limits of the province ceded, which was a valid title under the governments of France and Spain, which had preceded that of the United States in its occupancy and sovereignty, the whole of the claims would have been adjusted at once, now thirty-six years since. Instead of which, thirty six years, on the contrary, have passed away, and the claimants appear now no nearer the termination of this state of uncertainty and ruin to them than they were on the day of the ratification of said treaty of 1803. Let justice then, though late, when I am in the grave, and after a long life of supplication, be done us at last. The General Government, in my claims at least, can have no objection to pass a law confirming them at once, seeing that the revenue to be derived from them is destined for the purposes of educating her own citizens, the children and youth of the two States of Louisiana and Maryland; and in the case of the after claimants, passing a law permitting them to go into the courts of the country for decision on their validity, under the condition that they, the claimants, shall take other public lands, acre for acre, for such part of their claims, if confirmed by the courts, as have been confirmed by the United States to others by right of settlement, or have been sold by the United States. Such were the provisions of a bill which passed the Senate of the United States in Congress at three different sessions of the last years, but was not acted on by the House of Representatives from the lateness of the session when sent from the Senate, as said bill was not reached in its order previous to the breaking up of Congress.

The titles by which I claim those lands are perfect in every respect; they are not simple grants or donations by the ancient government, but purchases from it for valuable considerations. They are not only stamped with every form required by the local government of Louisiana, surveys, plats, patents, &c., &c., but were sent to Madrid, in Spain, and were ratified by the king in council. Those lands cost me large sums of money, acquired, with God's blessing, by honest industry, and the sweet of my brow, now thirty-four and thirty-five years since; and I have been deprived of their use and kept out of my property, rightfully and justly acquired, by a government which styles itself honorable and just, a government of the people; which government for a long series of years has refused even to pass a law permitting the claimants to go before the courts of the country for a decision on their validity or invalidity of their claims; has cut us off, in short, from all means of obtaining justice in any way. Let it be permitted me now to ask, (an American by birth, an old man, one devoted to his country and its institutions, and whose father waded with the Father of his country through the hottest battles of its revolutionary struggle for liberty and equal laws,) would the most despotic governments of Europe,

(under a plighted faith, the faith of a treaty) have so acted; and to answer the question, and say they would not. Not one on the long list would have so acted, could have so acted. Justice would have been meted out to their subjects similarly situated within a month from the date of the treaty obligation. Besides, on the score of interest, have the Government gained any thing by so acting? No, but lost, immensely lost, in various ways, (saying nothing of the loss of honor.) In addition to doing great injury to the State of Louisiana by keeping the land unsettled on, and waste, for upwards of thirty years, and her population spare, when otherways she would have been filled up and compact. The whole quantity claimed by individuals besides is trifling, both in quantity and value, and of no consideration, a drop in the bucket as it were, to the General Government. The Florida claims (on those located between the Mississippi and Perdido rivers) not exceeding in the whole (900,000) nine hundred thousand arpens, (French) about 700,000 acres, "seven hundred thousand English acres," and the residue of the large claims of Louisiana, say Bastrop's, Maison Rouge, &c., &c., not exceeding 1½ millions of French arpens, about 1,100,000 English acres.

For the base of a permament revenue, (to stand through all time with the blessing of the Most High,) I have preferred the earth, "a part of the solid globe;" one thing is certain, it will not take wings and fly away as silver and gold, government and bank stocks, often do. It is the only thing in this world of ours which approaches to any thing like permanency; or, in which at least there is less mutation than in things of man's invention. The little riches of this world, therefore, which the Most High has placed in my hands, and over which he has been pleased to place and make me his steward, I have invested therein, that it may yield (its fruits) an annual revenue to the purposes I have destined it forever.

Whereas eight or ten, or more bricklayers, carpenters, painters, &c., &c., will be constantly wanted to attend to, and keep in repair and good order, the houses, buildings, fences, &c., &c., belonging to the general estate, I recommend in consequence to the commissioners and agents of said general estate, to employ black mechanics, which shall belong and be owned by said general estate, (so long as there is slaves in the country,) for said purposes, letting them go out free to Africa every fifteen years, and replacing them by others whom they will purchase—as a means of great economy, as otherways such repairs would be a source of great expense to the estate. In some of the vacant lots of ground belonging to the estate, they can have their work shops for their mechanics, deposits of lumber, brick, stone, lime, sand, carts, animals, &c., &c. By all which means much expense may be avoided, and money saved to the estate.

And if buildings are to be put up on lots of ground in the city, or on the estates in cultivation in the country, owned by the general estate, their own mechanics can erect and build them up. The plan which my mind formed, (influenced, I trust, by the Divine Spirit,) and has

pursued for near forty years, to accumulate and get together a large estate in lands, lots of ground, in and near the city, houses, &c., &c., for the education of the poor, will in time, I doubt not, yield a revenue sufficient to educate all the poor of the two States of Louisiana and Maryland, and perhaps the poor of many other States of our happy Union. To effect and secure that I have laid its foundations deep and broad, in and all around the city of New Orleans in every direction, so that for centuries to come, (if managed in wisdom,) its revenue must and will go on increasing in amount with the growth and extension of the city (which is destined to be one of the greatest in extent and population the world has ever seen,) until its rents shall amount to some millions of dollars annually. If, therefore, those who will come after me, and will have the management of this store, (which I have strove to amass and pile up,) will labor to increase and render it productive with the same fidelity which I have husbanded it, and striven to make it a great one; then, indeed, it will become in time a huge mountain of wealth, and will yield its increase to the honor of God, and the benefit of generations yet unborn, through all ages of the world.

In relation to man's happiness, constituted as he is, I have always been convinced that the intellectual cultivation of the youth of our country alone, without moral and religious cultivation, cannot secure it, or give permanency to the free institutions of the country as they now exist. Education, separated from religion, yields no security to morality and freedom.

I will now speak a few words of myself, (having often seen and felt that my conduct, views, and object were not understood by my fellow man,) constrained as I feel myself to be, and bound so to do, and to declare, that my soul has all my life burned with an ardent desire to do good, much good, great good to my fellow man, (as it was chiefly by that means and through that channel that I could bend, greatly bend, to the honor and glory of my Lord and Master, which was my soul's first, great, chief object and interest.) I trust, I pray, that the mode I have adopted to effectuate it will receive the Divine blessing. I have, notwithstanding, much, very much, to complain of the world, rich as well as poor. It has harrassed me in a thousand different ways. Suits at law of great injustice have been instituted and carried on against me to deprive and take from me property honestly acquired, (for I have none, nor even would have any, that was not acquired by honest industry and the sweat of my brow;) and when obliged to seek justice through courts of law, (after waiting years and years with those who were indebted to me, and refused payment,) it has often and often been refused me. Many and many times have juries of my fellow men given me a stone, when I asked them for bread.

As one instance, (out of great numbers I could mention,) in a suit at law instituted by me against a rich widow and orphans, (a succession estate,) for notes to a large amount which I had endorsed for her husband in his lifetime, to serve him, (without any interest on my part, but through friendship,) and had to pay said notes, and against which

there was no offsets; the lawyers for the defence, having nothing that they could urge or say, in addressing a jury of my fellow men, why a verdict should not be given in my favor for the whole amount claimed, with interest and costs, confined themselves to repeating over and over, "Hold in mind, gentlemen of the jury, we pray you, that John McDonough is a rich man, and the defendants are a poor widow and orphan children." "Hold in mind, gentlemen of the jury, that John McDonough is a man of unbounded wealth, who does not stand in need or want the amount of those notes, and our clients are a poor widow and orphans, who are ruined if you give him a verdict for the amount." And what (will it be believed or credited) was the verdict of this jury of my fellow men? Why, that I should receive about the one-tenth part of the amount of the notes I had paid of the defendants, without interests or costs; and capped the climax by saying, "It was as much as the widow, they thought, could conveniently pay, and I was rich and did not stand in need of it," could afford to lose it.

On the same claim I applied for a new trial, which was granted me, and on its taking place before another, but a different, jury, the same pleadings being made by the counsel of the defendants, viz: "Remember, gentlemen, John McDonough is a rich man; our clients are a poor widow and orphans;" I obtained a verdict in my favor for the whole amount of my claim with interest and costs of court. Now, feeling those things, as I always have, most keenly, what is, let me ask, the duty of a juror, of a man? Is it to dispense (that sacred attribute of the Divinity) justice equally to all men, or is it to consult the faces of men? Of judges and their judgments I have also much, very much, to complain; but I refrain. What care does it not become governors and legislators to use, in their appointments to such offices, to secure high-minded, honest, honorable, and pure men!

As I have said above, I again repeat, that I have much to complain of the world, of men in general. They said of me—he is rich, old, without wife or child; let us take from him, then, what he has. Infatuated men, they know not that that was an attempt to take from themselves, for I was laboring, and had labored all my life, not for myself, but for them and their children. Their attempts, however, made me not to swerve, either to the right hand or to the left, (although to see and feel so sorely their injustice and ingratitude, made me often to lament the frailty, the perversity, and sinfulness of our fallen nature.) I preserved an onward course, determined (as the steward and servant of my Master) to do them good, w[h]ether they would have it, or w[h]ether they would not have it. And I have so strove, so labored to the last; the result is the hands of Him who fixes and determines all results; he will do therewith as seemeth good unto himself.

Whereas from my infancy up it has been the wish of my heart that my ashes should repose and mix in death with those of my earthly parents, (as in this life there was nothing so loved by me, so dear to me as my father and my mother,) and as they are interred in different graves in some of the ancient places of burial of the city of Baltimore,

(known to my sisters and their families, who reside there;) it is my wish, and I pray the executors named in my last will and testament, (should it not be permitted me by the Most High to go on there before my death, and attend to and have it done myself, as I am very anxious and hope to do,) to take measures, (those gentlemen will excuse and pardon the great trouble I occasion and put them to,) and have a family vault of lasting materials and great solidity erected in some one [of] the new burial places of said city of Baltimore, to have the remains of my parents raised and placed therein, and my body sent on there, that it may be placed alongside of theirs in said vault, to crumble and mix with theirs, to await the resurrection at the last day.

I will now, with the view of communicating to the commissioners and agents of the general estate my opinion in relation to certain parts and parcels of said estate, throw a few notes together, and then close those memoranda.

The eleven entire squares of lots of grounds (which contain upwards of three hundred lots) laying at the lower end of Poydras street, on both sides of said street, in the second municipality of the city of New Orleans, are very valuable. They should be laid out and divided into lots of 26 or 28 feet in front, by about 90 or 100 feet deep. A general plan should be made of each square, (as each square can be divided into upwards of thirty lots,) and said lots sold out on revertible leases of twenty-five years, (say two or three squares one year; in two or three years thereafter, two or three other squares sold out, and so on,) under certain conditions of raising them with earth, building on them, paying taxes, and all other expenses, fulfilling all municipal requirements, &c., &c.

The two thousand lots of ground and upwards, (of thirty feet front each lot,) which I estimate there is still remaining unsold by me, belonging to this estate, and which there will be and will remain the property of this estate at my death, as I do not intend to sell or dispose of any more of them,) within the present limits of Macdonough, (as per my original plan of division,) with many houses, buildings, &c., &c., on them, are very valuable and becoming more so every day, should be sold out in revertible leases of twenty-five years, say 100 or 200 lots, (of thirty feet front,) every two or three years, as wanted for building on, under certain conditions. Some of the squares laying in the rear of said town might be leased by the square for the purposes of gardening, &c., &c. The trees standing on most of those squares are valuable, and should be sold for cord wood.

The land in the rear of Macdonough and adjoining it, bounded by the side line of land belonging to John S. David above, and Toussaint Mossy below, and F. Verret in the rear, containing between three and four hundred superficial or square acres, will have to be, in a few years, (when the demand for more lots shall arise,) laid off by the surveyor into squares and lots of ground, by the continuation of the streets of Macdonough, which run from the river towards the rear, further back through said land, and laying off other new streets running parallel

there was no offsets; the lawyers for the defence, having nothing that they could urge or say, in addressing a jury of my fellow men, why a verdict should not be given in my favor for the whole amount claimed, with interest and costs, confined themselves to repeating over and over, "Hold in mind, gentlemen of the jury, we pray you, that John McDonough is a rich man, and the defendants are a poor widow and orphan children." "Hold in mind, gentlemen of the jury, that John McDonough is a man of unbounded wealth, who does not stand in need or want the amount of those notes, and our clients are a poor widow and orphans, who are ruined if you give him a verdict for the amount." And what (will it be believed or credited) was the verdict of this jury of my fellow men? Why, that I should receive about the one-tenth part of the amount of the notes I had paid of the defendants, without interests or costs; and capped the climax by saying, "It was as much as the widow, they thought, could conveniently pay, and I was rich and did not stand in need of it," could afford to lose it.

On the same claim I applied for a new trial, which was granted me, and on its taking place before another, but a different, jury, the same pleadings being made by the counsel of the defendants, viz: "Remember, gentlemen, John McDonough is a rich man; our clients are a poor widow and orphans;" I obtained a verdict in my favor for the whole amount of my claim with interest and costs of court. Now, feeling those things, as I always have, most keenly, what is, let me ask, the duty of a juror, of a man? Is it to dispense (that sacred attribute of the Divinity) justice equally to all men, or is it to consult the faces of men? Of judges and their judgments I have also much, very much, to complain; but I refrain. What care does it not become governors and legislators to use, in their appointments to such offices, to secure high-minded, honest, honorable, and pure men!

As I have said above, I again repeat, that I have much to complain of the world, of men in general. They said of me—he is rich, old, without wife or child; let us take from him, then, what he has. Infatuated men, they know not that that was an attempt to take from themselves, for I was laboring, and had labored all my life, not for myself, but for them and their children. Their attempts, however, made me not to swerve, either to the right hand or to the left, (although to see and feel so sorely their injustice and ingratitude, made me often to lament the frailty, the perversity, and sinfulness of our fallen nature.) I preserved an onward course, determined (as the steward and servant of my Master) to do them good, w[h]ether they would have it, or w[h]ether they would not have it. And I have so strove, so labored to the last; the result is the hands of Him who fixes and determines all results; he will do therewith as seemeth good unto himself.

Whereas from my infancy up it has been the wish of my heart that my ashes should repose and mix in death with those of my earthly parents, (as in this life there was nothing so loved by me, so dear to me as my father and my mother,) and as they are interred in different graves in some of the ancient places of burial of the city of Baltimore,

(known to my sisters and their families, who reside there;) it is my wish, and I pray the executors named in my last will and testament, (should it not be permitted me by the Most High to go on there before my death, and attend to and have it done myself, as I am very anxious and hope to do,) to take measures, (those gentlemen will excuse and pardon the great trouble I occasion and put them to,) and have a family vault of lasting materials and great solidity erected in some one [of] the new burial places of said city of Baltimore, to have the remains of my parents raised and placed therein, and my body sent on there, that it may be placed alongside of theirs in said vault, to crumble and mix with theirs, to await the resurrection at the last day.

I will now, with the view of communicating to the commissioners and agents of the general estate my opinion in relation to certain parts and parcels of said estate, throw a few notes together, and then close those memoranda.

The eleven entire squares of lots of grounds (which contain upwards of three hundred lots) laying at the lower end of Poydras street, on both sides of said street, in the second municipality of the city of New Orleans, are very valuable. They should be laid out and divided into lots of 26 or 28 feet in front, by about 90 or 100 feet deep. A general plan should be made of each square, (as each square can be divided into upwards of thirty lots,) and said lots sold out on revertible leases of twenty-five years, (say two or three squares one year; in two or three years thereafter, two or three other squares sold out, and so on,) under certain conditions of raising them with earth, building on them, paying taxes, and all other expenses, fulfilling all municipal requirements, &c., &c.

The two thousand lots of ground and upwards, (of thirty feet front each lot,) which I estimate there is still remaining unsold by me, belonging to this estate, and which there will be and will remain the property of this estate at my death, as I do not intend to sell or dispose of any more of them,) within the present limits of Macdonough, (as per my original plan of division,) with many houses, buildings, &c., &c., on them, are very valuable and becoming more so every day, should be sold out in revertible leases of twenty-five years, say 100 or 200 lots, (of thirty feet front,) every two or three years, as wanted for building on, under certain conditions. Some of the squares laying in the rear of said town might be leased by the square for the purposes of gardening, &c., &c. The trees standing on most of those squares are valuable, and should be sold for cord wood.

The land in the rear of Macdonough and adjoining it, bounded by the side line of land belonging to John S. David above, and Toussaint Mossy below, and F. Verret in the rear, containing between three and four hundred superficial or square acres, will have to be, in a few years, (when the demand for more lots shall arise,) laid off by the surveyor into squares and lots of ground, by the continuation of the streets of Macdonough, which run from the river towards the rear, further back through said land, and laying off other new streets running parallel

with, or up and down the river, to intersect and cross those which will run back from the river, and a plan made of it. This body of land is sufficiently extensive to form out of it between two and three thousand lots of thirty feet in front each lot, and will be in time of great value. In the mean time, (until laid out into squares and lots,) it might be leased in small parcels or tracts by the year, or for four or five years at a time, to be cultivated in gardens for the supply of the city with vegetables. I am cultivating at this moment a part of it in a very valuable garden. The greater part of it is covered with wood, which is valuable and should be sold, to be taken off. The small tract of land laying at the upper end of Macdonough, having a front of one hundred and fifty-eight feet, French measure, on the river Mississippi, adjoining land of J. S. David above, running back about forty acres, more or less, until it intersects in the rear the line of the land of F. Verret, and fronting in its whole depth on the lower side, Hamilton street, in Macdonough, is very valuable, and should be laid out into lots fronting on said Hamilton street, (thirty feet front each lot,) with depths running across the tract 158 feet deep, by which means 200 to 300 lots can be made out of it. There is a large convenient house and other improvements on it. In time, when the neighbor above shall lay out his land into lots, it will be much to his interest to obtain the privilege to communicate his streets across this tract of land with the streets of Macdonough, which he might be permitted to do on giving other lots of ground of an equal number of square feet, (well situated,) in the suburb he will lay off, to the general estate to indemnify it for the loss of ground it would sustain by the opening of the streets. The four thousand (4,000) acres of land and upwards, (being the rear of what is called the Caselar estate,) laying forty arpens in the rear, on from the river Mississippi, (except twenty feet in front which lays fronting on the Mississippi, and runs back forty arpens to the rear land,) and running back on in the rear, to the bayou Villars on river Ouacha, purchased by me on the 28th March, 1837, of Emile Sainet, before Felix De Armas, notary public, as also two other tracts adjoining said tract below, fronting on said bayou Villars, purchased by me, say, one of them on the 9th June, 1837, the other on the 1st July, 1837, of Sosthene Raman, syndic of the creditor of John B. Degray, before F. Seghers, notary public; containing (the two tracts) about eleven hundred acres, making in the three tracts upwards of five thousand acres of land, must become in time of immense value, (though it may be fifty or one hundred years first, or before it will be wanted.) It lays within one mile on a straight line of Macdonough. The plan or determination which I had formed in my mind in relation to this valuable body of land, in connexion with the town of Macdonough, is this:

The land lying in between Macdonough and those five thousand acres of land, belong to, or are owned by, two persons, say Furoy Verret, and the heirs or children of Prosper Marigney. I had therefore determined, whenever those two tracts were brought into the market for sale, as it must and will be no doubt before long, as one body,

that of Mr. Verret's is a partnership concern, owned by different persons in undivided interests; the other body belongs to minors, the children of the late Prosper Marigney, to whom it cannot be worth a dollar for use, as it is low ground, and they own only the low land, prairie, and swamp, after forty arpens from the river, and who no doubt will be very desirous to sell it, when arrived at the age of majority, to purchase them; by which means, the whole body, together with Macdonough (which is the point or outlet on the river Mississippi,) and the land laying in the rear, touching Macdonough, now owned by me, would form a body of land of ten thousand acres, laying opposite and in front of the city of New Orleans; which property alone and itself, would become in time a mine of wealth, such as no individual would possess in the United States. In the event of my acquiring those two intervening bodies of land which separate now Macdonough from my five thousand acre tracts, my further plan is to extend the streets, walks, and avenues of McDonogh, on (by degrees as wanted) through the whole body, as it will all in time be wanted for the immense population which is to inhabit New Orleans. In furtherance then of this plan, and the interest of the general estate, I recommend to the executors named in my last will and testament, should I not succeed in making those purchases myself, personally, before my decease, to purchase, if possible, the whole of the tract belonging to Mr. Verret, from the bank of the river Mississippi, back to the bayou Villars, on Ouacha; and that of the minors Marigney, as now owned by them, say the rear of their late father's tract, from a point distant forty arpens from the river Mississippi, back to said bayou Villars, (as it is only that part which is owned by them; the whole of the front on the Mississippi, forty arpens in depth, having been sold out by their late father previous to his death.) To effect which purchases they could sell the bonds, or such a part thereof as would be necessary and wanting, of the first municipality of the city of New Orleans, left by me a part of my estate, and pay the purchase money with the proceeds. To effect the purchase, however, this request, and their intentions in relation to it, should be kept secret, as success in all transactions of business must, in a great measure, depend on secrecy. The wood standing on this five thousand acres of land is very valuable, and must become more and more so every day, not only from the increase of value of the article, but its increase from its yearly growth. The one hundred and ninety squares or parts of squares of ground, containing three thousand six hundred and ninety-three lots, (3,693 lots) laying in the suburb Washington, in the third municipality of the city of New Orleans, purchased by me on the 5th and 26th of April, 1839, of L. B. Macarty and Madame L. Lalaurie, will become in time of immense value; but I estimate that fifty to one hundred years or more must pass away before that will take place; except, indeed, that means shall be sooner taken to drain and improve the ground, when thirty or forty years, in that event, might bring them into use, and occasion a demand for them. But that those lots of ground must become in time of great value,

nothing is more certain. From various causes, say from the washing of the ground in front towards the river, by the rains carrying earth into the rear, and the natural decomposition of vegetable substances on them, the surface of the ground is becoming every year higher and higher. When a demand will arise for those lots of ground, 200 or 300 of them should be brought into market, and leased out every two or three years. The wood on this land (cypress and other timber) is valuable, and may be sold at public auction, to be cut down and removed from off the land by a certain day, so that another crop may push and grow up; as it is a fact, that the lands of this country, the low lands of the Mississippi, produce trees of large size in fifteen years, from the root of the old tree which had been cut down.

The land lying in the rear of the suburb Livaudais, adjoining the second municipality of the city of New Orleans, bounded by Saint George street, (the last and farthest street in the rear of said suburb,) and thence running back, (see my notes on said property in my list of property owned by me in book,) containing about five hundred (500) square acres, purchased by me on the 10th of February, 1836, from Matthew Morgan, J. S. Peters, L. Pierce, and Wm. H. Chase, as per deed before Felix Grima, notary public, must and will become in time of immense value, but it may be fifty or one hundred years first. This body of land should be laid off into farm lots, and a plan made of it under the name of New Suburb Livaudais. The streets of suburb Livaudais leading from the river bank should be extended through it, and intersected by other cross streets, forming it into squares; and when a demand shall arise for the lots for building on, which will take place in time, two or three hundred of them should be brought into market, and leased out every two or three years. I estimate that there is a sufficiency of land, (after deducting for streets,) in this tract to form at least four thousand lots of thirty feet in front each lot. And it may be, if my title is decided under my purchase to extend beyond the eighty arpens, from the river in the rear, that then there will be land enough to form six thousand lots. The wood on this land, (cypress and other timber,) is valuable, and should be sold to be taken off and removed by a certain time, under the condition that every thing not removed by a certain day should be forfeited, and revert of right back to the vendor. It is a fact known to the old inhabitants of the State, (whatever the cause or causes may be,) that all the swamps, low lands, and prairies, both on and off the river, (even 50 or 100 miles off the river,) is yearly raising and becoming higher. Prairies, which fifty years since were what is called "shaking and trembling prairies," and were generally covered with one or two feet of water, are now high, dry, and in a great many instances cultivated in sugar cane, cotton, &c. The forty-one or forty-two squares, or parts of squares, of lots of ground, containing about nine hundred (900) lots, laying in the suburb Washington, in the third municipality of the city of New Orleans, purchased by me at public auction, as per deed of sale, of the syndic of L. C. Pascal on the 26th September, 1838, before Joseph Cuvillier, notary public,

(with the exception of three squares purchased of the syndic of Rousseau, February 13th, 1839, and of the sheriff, syndic of Aubert,) will become, in time, of great value, but fifty or one hundred years must probably first pass away before they will be wanted for the uses of the city; when a demand for them shall arise, they should be brought into market and sold out on lease by degrees, to meet it. The wood on them, (cypress and other timber,) is valuable, and can be sold every fifteen and twenty years, as a new growth of timber immediately springs up as the old one is cut down. The four thousand four hundred and ninety-eight acres and twenty-hundredths of an acre of land, (4,498 $\frac{20}{100}$ths,) laying in the rear of the suburb Washington, and adjoining to it, in the third municipality of the city of New Orleans, in township number 12, of range number 12 east, on the east side of the Mississippi river, for which body of land I hold seventy-five certificates of the receivers of public money of the United States, (and must receive patents from the General Land Office of the United States, if having been sold as public land by the Government of the United States, so soon as said patents can be issued. All which said certificates are in my own name, with the exception of twenty-five of them, which are in the name of Mr. Charles Derbigny, but transferred to me, having purchased them of him, (see his deed of sale to me for the quantity of land said certificates call for, executed before L. T. Caire, notary public,) must and will become in time of immense value, as it is a property of great extent of surface; so great, indeed, must its value in time be, say in one or two hundred years, that no man of the present day, I am convinced, can estimate it. Every foot of it will be wanted in time by the population of the city of New Orleans for building lots, as it lays within two, three, or four miles of the centre of the city.

When the time shall arrive that the lots will be wanted, I estimate that this body of land will form at least forty thousand lots, 40,000 lots, each lot fronting thirty feet on a street, and having one hundred and twenty feet in depth, exclusive of the streets which I allow for in my estimate; it should then be laid out under a general plan, by an able and correct engineer and draftsman, the streets made to correspond with those of the city of New Orleans, and brought into market by degrees, by leasing out, every few years, a certain proportion of said lots. In the mean time, said land will be filling up, raising, and becoming every year higher and dryer. The wood standing on it may be sold every fifteen years, (as much of it is wooded, and much more prairie, but which will be wooded in time,) divided into pieces of ten acres each; and the wood standing on said ten acre pieces sold and taken away ready for a new growth. And other parts of it may be leased in small farms, and cultivated for the supply of the New Orleans market with vegetables, until the time shall arrive when it will be wanted for town lots.

I have already, in those memoranda, said something on the subject of my large land titles, comprising, the proportion of them owned by me, nearly two hundred thousand arpens, (200,000 arpens,) laying in

the State of Louisiana, in what is called the Florida district, which are as yet unconfirmed by the Government of the United States. As it is probable, however, in the settlement of those claims, that the General Government, in accordance with the bill which passed the Senate of the United States at three different sessions of Congress, will insist that the claimants shall take other lands, acre for acre, laying within the State of Louisiana, for those they claim; (seeing that the General Government have either sold or confirmed by law, to the settlers who are seated on them, the greater part of the lands for which the titles of the claimants call;) in that case, lands of great value, or lands which in time, and that time not very distant, will become of great value, may be secured to the general estate; for those claims of mine, if the proper care and attention is given to the subject of their location, by the commissioners and agents of the general estate, the most valuable lands in the world may be taken on both sides of the Mississippi river, laying on and fronting the river, below the fort of Plaquemine, which have already been offered for sale by the General Government, but were not sold; at this present time not very valuable, but, from the annual overflow of the river, and other causes, will in a few years become of immense value. The same may be said of the lands on both sides of the bayou Lafourche, low down on it. The lands in the parish of Iberville, in the rear of and adjoining those I already possess there, laying about five leagues above the bayou Lafourche, on the Mississippi, a league or two in the rear of the river, and from thence back to, and laying to, and laying on the Atchafayla river, are also very valuable; and much land may be taken on both sides of the river Mississippi, in the parish of Plaquemine, commencing five or six leagues below the city of New Orleans, and from thence running down six or eight leagues further, laying and beginning in the rear of the river, forty arpens from its bank, (called the second depths, or conceptions,) which in time will be very valuable.

In the rear of Terre du Bœuf, below the city of New Orleans, there is a valuable body of land, as there is also in various places and situations in the rear and off the river, on the western side of the Mississippi, and the bayous, which lay in the neighborhood and communicate with the bayou Lafourche, low down, say the bayous, Grand and Petite, bayou Black, bayou Grand, &c., &c. The General Government will, I hope, so shape the law as to permit the whole of the claims to be laid over again on other land; as it would be the height of injustice for her to insist on our keeping in the Florida district such parts of the claims as were not taken from us by the settlers or sold by her, the General Government, which of course can only be the part of the land the least valuable; as it is a natural thing to suppose that the parts of our land taken up by the settlers, and those parts of it which have been sold by the General Government, must be the choice parts of our claims. However, as the case may be, whatever land may be obtained or remain to the general estate under those claims, should be laid off into small *tracks* on or off rivers and bayous, or leased out to

small planters or farmers for use and cultivation. The seventy or eighty thousand acres of land laying in the rear of the river Mississippi on the east side, sixteen leagues above the city of New Orleans, back of the sugar estates of Madam Fontin and Rezin D. Shepherd, and the plantations of Henry Fonteneau, (for a description of which and my opinion of it I refer to a list of my property in my account book or ledger, pages fo. 21, 22, and 24.) A part of it lays within forty arpens from the river Mississippi, the residue eighty arpens from the river, and extends from thence, as per plan, to Lake Maurepas and the Amité river, a depth of eighteen or nineteen miles.

This body of land is now at the present time of great value, and in time will become of immense value. Its soil is among the richest that the sun shines on, and every inch of it will be cultivated in time, as very small levees would keep out the back waters and make every part of it cultivable. It must become in time a perfect garden. The timber on it alone, which is of every kind, is a fortune. Cypress stands on it in sufficient quantities, and of immense growth, to supply twenty steam saw mills for twenty years. This body of land is intersected by several large streams or rivers, (the Arcadian bayou or New River is one which runs through the centre of the whole tract, and approaches near to the Mississippi, falling into Lake Maurepas,) which are navigable for brigs and schooners of large size. If capitalists from New England would come out, with their industry and perseverence, and put up saw mills on this tract of land, paying certain prices to the general estate for each square foot of timber cut and sawed up, they would, at the price at which our sawed cypress lumber sells at here, soon make fortunes. The whole tract should be accurately surveyed, a general plan made of it, and the whole divided off into small tracts, and in time leased out to small farmers for use and cultivation.

The four thousand five hundred and ninety-six acres and 6-100ths of an acre ($4{,}596\frac{6}{100}$ acres) of land, laying sixteen leagues above the city of New Orleans, on the east side of the river Mississippi, and adjoining the last above mentioned body of land (of 70 or 60,000 acres) above or on its upper side, is situate in township No. 11, of range No. 5 east, on the east side of the Mississippi river, and lays, some part of it, forty arpens from the river adjoining Mr. Shepherd's sugar plantation, and other parts of it at eighty arpens from the river, are held by me in virtue of thirty-nine certificates of the receiver of public moneys of the United States, being lands purchased by me at the Government sale, for which patents must issue to me from the General Land Office, and is not surpassed in quality by any land in the State. It is of great value; every foot of it is believed to be cultivable, and is heavily timbered with the most valuable kinds of wood. A general plan should be made of it, and the whole laid out immediately in small tracts of fifty acres each, and leased out to small farmers.

The six or seven thousand arpens of land, more or less, (being seven tracts which were purchased by me from seven different persons,) laying all in one body on the bayou des Familles and bayou Villars, on

river Ouacha, within four leagues by land, along a fine road, of the city of New Orleans, a very easy 1½ or 2 hours ride, is of great value. There is nothing superior to it in quality in Louisiana, and nearly every foot of it is cultivable. It is sufficiently extensive to form four large sugar estates, is heavily wooded with timber of every kind, and sufficiently near to the city to supply its market with vegetables of every kind for its daily use. Though its value is great now, for it cost me a large sum of money, it must become immensely more valuable in time. It lays nearly opposite the lands belonging to me on the opposite side of the bayou Villars, on Ouachia, in the rear of Macdonough, from which town was there a railroad, which there will be ere long, the distance would be on a straight line but little over three miles. My intentions are, if spared and permitted so to do, to establish this body of valuable land in sugar estates, and put black people on them to cultivate and work them. If that is not done, they should be divided into small farms, fronting on the different bayous, say an acre front by a certain depth, and then farms in the rear of those. A general plan made of the whole body and leased out.

The four different tracts of land laying on and fronting the right bank of the river Mississippi, at about twenty leagues below the city of New Orleans, and which contain, say one of said tracts, eighty or eighty-four arpens in front on the river; another, eight arpens in front; another, forty arpens in front; and the other, ten arpens in front; making in all about one hundred and forty arpens in front on the river bank, all of them by forty arpens in depth; all of which tracts of land lay adjoining each other, and in one solid body, are of great value, and would make three large sugar estates. It is the finest body of land in that region of country, and possesses a noble body of timber. The timber alone, from its situation, is worth much money. If I am spared and permitted, I intend to establish those lands in sugar. If that is not done, it should be laid out in small farms, of one or two acres in front on the river, by forty acres deep, and leased out. A short distance above the last mentioned tracts of land, fronting on the river Mississippi, I own two other tracts of most valuable land, the most valuable in that district, containing together the two tracts (though they do not lay together, there being a small tract between them) four hundred and thirty-eight acres and 26-100ths of an acre, (438 26-100th acres.) One of said tracts has, I think, a front on the river of about thirty acres; the other, I think, a front of eight or nine acres. (See township plat.) Said land was purchased by me at a sale made by the Government of the United States, and for which I hold two certificates of the receiver of public moneys of the United States, and must receive Government patents for it. It lays in the township number 19, in the range number 28 east, on the west side of the Mississippi river; it should also be leased out in small farms.

The thirty-one thousand eight hundred and sixteen arpens (31,816 arpens) of land, (forming a part of what is known as the Vacherie Dugué,) laying at forty arpens in the rear of the left bank of the bayou

Lafourche, in the parish of Lafourche Interior, fronts in its whole extent on the bayou des Allemans, and the pettit lake des Allemans, as per plan; (for which see a copy in my book of plans.) Said body of land lays at about fifteen or eighteen leagues at the city of New Orleans, by the route of the Barataria canal and the lakes in rear, and must become in time of very great value, from its situation and proximity to the city of New Orleans and the sea, and the richness of the soil. A considerable part of it is heavily timbered, which *the* timber is spreading and extending yearly more and more. A part of this land is now high and fit to cultivate the sugar cane on, and all of it would make fine rice plantations. It should be laid out in the course of a few years (as soon as a demand shall arise for it) into small tracts of forty or fifty square acres each, and leased to small farmers.

The three thousand two hundred or three hundred (3,200 arpens) square arpens of land, laying in the parish of Iberville, on the right side of the river Mississippi, thirty leagues above the city of New Orleans, and about three miles in the rear of the river, being a part of the estate of the late Pierre Belly, is among the finest and most valuable lands in the world; none can exceed them in richness and fertility, and every foot of it is high and cultivable, covered with timber of every description, and immense cane brakes. The cypress timber on it alone (the high land cypress, which are of immense growth and size, and as thick as trees can stand on the ground) is worth a fortune. I have been frequently applied to by persons who wished to establish steam saw mills thereon to sell them cypress, and permit them to establish mills on this land, but always refused, not having time to go and attend to it myself; and without that, I might have had my timber destroyed without receiving payment for the one-twentieth part of what would be taken and sawed up.

But a plan may be fallen on and adopted, by calculating the square feet of timber in each tree, and its consequent value; and then ascertaining how many trees stand on an acre of land, the value of the cypress timber on each acre of land would be known with precision. By which means sales could be made of the cypress timber standing on ten acres of land, on twenty, thirty, or fifty acres, which should then be surveyed and accurately marked and bounded, and the purchaser of the timber obligated by contract to have the cypress cut and taken away by a certain time, (say in one year, two years, or a longer time as might be,) under a forfeiture of whatever might remain uncut and unremoved by said day to the vendor of it. Some plan of this nature should be adopted and the cypress sold. If it can be preserved, however, from depredators on it, it will become more and more valuable every year. As soon as the cypress is sold and taken off the land, (there should be, however, on further reflection, a certain number of large cypress trees reserved from sale on each small farm, into which said tract will be divided, for the uses—buildings, fences, &c., &c.—of those who will establish and settle said small farms; the land should be divided off into small farms of 50 or 100 square acres each, and

leased out. I have reserved a road (a private road of my own through the front estate, when I sold off the front estate) back to those lands from the river. A general plan should be made of the whole of this body of land, showing the subdivisions of it into small farms, the roads through it, and every thing else in relation to it. Adjoining to those last mentioned lands in the parish of Iberville, or close by them, I also own two thousand one hundred and eighty-eight and $\frac{70}{100}$ (2,188$\frac{70}{100}$ acres) square acres of the finest land in the world, of same quality as that last mentioned above, laying in the township number 11, of the range number 13, purchased by me at the sale of public land made by the Government of the United States, and for which I hold fifteen certificates of the receiver of public money of the United States, and must receive Government patents for them as soon as issued from the General Land Office. It is also covered with the high land cypress, and should be managed as I recommend for the last tract above, and leased out. A general plan, with the tract last above, should be made, showing their relative position, &c., &c.

The 5400 or 5500 acres of land in this and the last above described tract, I again observe, are of great and immense value. The large and extensive body of land called the "Grand Cheniere," lays at about thirteen leagues below the city of New Orleans, on the right side of the river Mississippi, and about two or two and a half miles in the rear of the river. It lays on each side of a bayou of that name, (which bayou commences at Lake Hermitage,) fronting on Lake Hermitage on each side of said bayou, and runs with said bayou twenty-four miles and upwards, toward the sea, and to the sea, having a depth of six arpens on each side of said bayou. It is a noble, rich, and most valuable body of land, and should be laid off into small farms of four or five acres front on the bayou, with its depth, and leased out. There is a large quantity of valuable live oak timber on it, besides timber of every other description. It is one of the richest soils in the State, and there *is* now several persons living on it, to whom I have given short leases of small tracts for the purpose of having the timber (live oak) taken care of and not depredated on. A general plan should be made of it. The island laying on and formed by the grand Lake Barataria, the little or small Lake Barataria, and the two bayous or rivers, called, one of them, bayou Saint Dennis, the other bayou Cabbanaze, or Grand Bayou, which bayous run out of little Lake Barataria into big Lake Barataria, lays in the parish of Jefferson, at a distance of eighteen leagues from the city of New Orleans, and is believed to contain fifty or sixty thousand square acres of land, or more. Some small part of it is high land; there is a considerable quantity of live oak and other timber on it, and it is fast becoming timbered. The whole of it, being a soil of the richest kind, is believed to be highly adapted to the culture of rice, as by means of small levees the rice plantations could be overflowed with water at pleasure. It will in time, no doubt, become very valuable. The tract of land adjoining, and laying on the lower side of the town

of Baton Rouge, forty leagues above the city of New Orleans, having a front on the river Mississippi of fourteen arpens, is an immensely valuable body of land. Its position and situation is most beautiful and advantageous, and it possesses one of the richest soils, covered with the finest timber. It will, in time, and that time not far distant, become a part of the town of Baton Rouge, and be wanted for town lots, when a plan will have to be made of it, dividing it into squares and lots, by means of streets, to be leased out. In the mean time, it should be laid out into small farms of one acre each, fronting the river, by 20 or 30 acres deep, or running back to a road which crosses it in the rear about that distance from the river; and then other small farms, fronting on said road in the rear, and running back to the back or rear limit of the tract. The two thousand and sixty-five acres and $\frac{45}{100}$ of an acre (2,065$\frac{45}{100}$ acres) of land laying on the river Auchene, in township number 15, in range number 12 east, on the east side of the Mississippi river, was purchased by me at a sale of public lands made by the Government of the United States, for which I hold six certificates of the receiver of public money of the United States, and have to receive Government patents for it as soon as issued by the general land commissioner, is of great value. The Auchene, which lays about 1½ miles in the rear of the river Mississippi, heads about five leagues below the city of New Orleans on the left side of the Mississippi, near to Terre au Bœuf, and runs down towards the sea, keeping about the same distance in its whole course from the river Mississippi. This body of land begins about six leagues from the city of New Orleans, and has a front of about three miles on each side of said river Auchene; said river Auchene running through the centre of it in its whole length. The land is of the first and richest quality, covered with timber of every kind, and has on it a large body of most valuable live oak. It should be laid out in small farms of two or three acres in front on the river, farms on each side of the river, with all its depth, and leased out, reserving all the live oak from being touched or cut down. Not permitting a live oak tree on any part of the whole tract to be cut down, as that timber is very valuable, and becoming very scarce.

The tract of land of twenty-four acres in front and forty acres deep, laying on the canal of the bayou Lafourche, which leads to the Attakapas, is very valuable. The front on the canal, for a few acres in depth, I am told, is low, but after that there is one of the finest and richest bodies of high land in the world. It should be laid off in small farms of one or two acres in front on the canal, by forty deep, and leased out. It is heavily timbered, and is an almost impenetrable cane brake.

The eleven hundred and fifty-nine acres and $\frac{99}{100}$ of an acre (1,159 $\frac{99}{100}$) of land, laying in the townships numbers 13 and 14, in the range number 14, was purchased by me at a sale of public land made by the Government of the United States, for which I hold fourteen certificates of the receiver of public money of the United States, and

have to receive Government patents for it. It is a most valuable body of land, none richer or superior to it. It is covered with an immense growth of timber, is an impenetrable cane brake, and lays, I believe, adjoining the last above mentioned tract, or at any rate in its immediate vicinity. Should be laid out in small farms of 50 or 100 acres each, and leased out. The tract of land containing ten acres in front on the river Mississippi, and eighty acres in depth, situate eleven leagues below the city of New Orleans, on the right bank of the river, adjoining above the sugar estate of Mr. Andrew Dunford, is a most valuable tract of the best land of the country. It should be divided off into small farms of one arpen in front on river, by a certain depth, and then farms laid off in the rear from a high ridge of lands which lays there, also of one arpen in front, on a road along said ridge of high land, by the residue of the depth of the tract, and leased out.

The tract of land containing six hundred and forty acres, (640 acres,) laying on the left bank of the Amite river, near Lake Maurepas, being the first bluff or tract of high land on the river in going up it, (on which I formerly had a steam saw-mill,) is a very valuable body of land, in every light in which it can be viewed, as to soil, (being of the first quality,) elevation, situation, &c., &c. It must be the landing and place of deposite for the shipment of the produce of a large extent of back country, and in time will be wanted (a part of it at least) for town lots, when it should be divided and laid off into squares, lots, and streets for a village. In the mean time it should be divided into small tracts for farms, and leased out. The tract of land containing three thousand two hundred arpens, (3,200 arpens,) laying in the parish of Opelousas, fronting forty arpens on each side of the bayou "Ney Pegué," and forty arpens in depth on each side, is well timbered, and of middling quality; it should be laid out into small farms of one or two arpens in front, on the bayou, by forty arpens deep, and leased out. For many other valuable tracts of land and other pieces of property, laying in the city of New Orleans, its different suburbs, and the country around, on which I have no particular remarks to make, or information to communicate, to the gentlemen who will see carried into execution my last will and testament, or to those gentlemen who will receive the appointments of commissioners and agents to the general estate, I refer them to a list of my real estate kept in my book of accounts; said book is marked or labelled outside "Leger," J. "McDonogh." I recommend to the commissioners and agents of the general estate to have plans made out by their secretary, and copied into the book kept for the purpose, showing the division into lots of each particular piece or portion of a piece of property which shall be divided, its measurements, &c., &c., with a general plan or plans, showing the particular situation of each piece of property in relation to that which surrounds it, or which is in its neighborhood; as also lists of every piece of property or real estate, either in the country, in the cities, towns or villages, belonging to, and owned by, the general estate; its measurements, place, situation, how disposed of, whether

leased or not, to whom leased or rented, for what length of time leased, conditions on which leased, &c., &c., besides opening an account on the books on the general estate for every person with whom it has affairs of business.

As my object, in recommending to those gentlemen who will have the execution of my last will and testament, and the gentlemen who will be named commissioners and agents of the general estate, to take up lands low down on the river Mississippi, on the bayou Lafourche, and various swamp and lowlands in other parts of the State, if misunderstood by them, may occasion their surprise, I will observe, that the great object I have in view (as may plainly be seen) is the gradual augmentation in value of the real estate which will belong to, and be owned by, the general estate, for centuries to come, by investing at this time small sums of money in large and extensive properties, now, at this moment, of little value, but which time (who is unceasingly at work, and whilst men sleep is actively employed) will make of immense value, (for time is never for an instant idle, but is constantly and forever employed, "setting unto man therein a speaking example, which says, 'Labor, oh man, is the honor of thy being!' labor and fulfil the intent of thy creation,) so that the revenue arising therefrom (which alone is to be taken and expended) will go on increasing with the increase of the country and its population for centuries to come, and produce means in time sufficient to educate yearly thousands upon thousands of the poor of our country; which God will, I pray of his infinite mercy and goodness, grant.

It will be well to say here in whom I place my hopes, trust, belief, and faith, and in the tenets of what church of Christ I have walked. My hopes, trust, belief, and faith is in salvation through the perfect, the all-sufficient and accepted atonement of our blessed Lord and Master Jesus Christ. And I have walked a Presbyterian, of the "Presbyterian church" so called, or that church the ecclesiastical government of which is conducted and ruled by Presbyters.

I request that a copy of those memoranda, recommendations, &c., may be made out and forwarded to the commissioners of the free school and free schools' fund, in the city of Baltimore, in the State of Maryland, to be by them copied into a book in their office for safe-keeping; as also a copy of my last will and testament, also to be copied by them into a book.

(Signed) JOHN McDONOUGH.

The slaves mentioned in my last will and testament to be sent to Africa, are already sent and gone there.

The slaves James, Thornton, Noel, John Defuge, and Long Mary, (being old and faithful servants,) are to be set free here.

I recommend that insurance on some of the buildings, laying in New Orleans and Macdonogh, be effected in other cities of the United States, (or Europe,) besides New Orleans; because if the whole city of

New Orleans should be burned down, the insurance offices would be ruined, and rendered unable to pay the loss.

I request that a copy of my will, a copy of those notes and memoranda, with a copy of the inventory of my estate, may be forwarded to to the Governor of the State of Maryland, to be placed in the archives of that State, for the purpose of knowing its rights under my will through all future time. So that, if it should be attempted hereafter to violate my will and intentions in any way, that she (the State of Maryland) may know and put it right, or other ways seek her just interest under it. And that the same may be done (for the same purpose and intent) and delivered to the Governor of the State of Louisiana, to be placed in the archives of this State.

Should I be cultivating any estates at my death, on which I have slaves, I recommend to the commissioners and agents of the general estate to purchase other slaves (every fifteen years as they are authorized to do by my will) to cultivate said estates, (whether profitable or not, as by so doing said slaves will obtain their freedom in Africa in fifteen years; which circumstance, with the spread of the gospel and civilization consequent thereon, will be a good, far exceeding all pecuniary profits and advantages of this world,) and replace those who will have served fifteen years, and have been sent to Africa, and so on, every fifteen years, (so long as there shall be slaves remaining in our country,) purchasing a sufficient number for the cultivation of the estates, and delivering up to the Colonization Society all such slaves as have served fifteen years to be sent to Africa.

I recommend that great care be taken in selecting proper men as overseers and managers for the estates, that they are pious and christian men, who will strive to lead the black people to the Most High, at the same time that they make them, and teach them, to do good work, to be faithful, industrious, and indefatigable in their labors. That application be made to the legislature of the State for permission to educate the black people on the different estates, (a good English education,) as they are to be sent to Africa. If permitted by law, get teachers and have them educated, and specially in the knowledge of God.

See that the overseers every morning and evening assemble the people in prayer, before going to work in the morning, and after work at night. See that the overseers have them taught, old and young, little children and all, the ten commandments, the Lord's prayer, and the creed, and if permitted by law hold Sunday schools.

As soon [as] they know how to read, give each one a copy of the Holy Bible; and on going to Africa, see that a copy of that holy book (the Bible) is put into the hands of each to be taken with them. If permitted by law, let Sunday schools be constantly held for the whole of them, old and young, and they made to attend it the whole day.

Let there be a house erected on each plantation for a church, and divine service performed therein on the Sabbath day, forenoon and afternoon, constantly.

On such estates as I may be cultivating at my death, and which the agents and commissioners of the general estate may continue to cultivate after my decease, the slaves and cattle (immaterial what the culture carried on may be, sugar or other) shall not be permitted to labor on the Sabbath day, but shall cease work at sundown on Saturday evening, and commence again their labor at sundown on Sabbath evening.

I recommend that the estate laying in the bayou St. John and the Metairie road, be laid off into acre lots, fronting the Metairie road, running across said tract of land, (eighteen acres deep,) and leased out for gardens; and in time, when the lots will be wanted for city lots, that a plan be made of it, dividing it into streets and lots, as the streets of the city of New Orleans continued back will run through it, and then it may be leased out in small city lots. The revenue arising from this body of land will in time be very great.

I recommend that the secretary of the general estate be made to reside in the house which I now occupy in Macdonough; by which means the black people, mechanics, and others, will be kept out of the contaminating influence of the city of New Orleans, and be the more easily managed. Bricks made, lime burned, and other materials kept in store and laid up for use.

Having been the friend of the black and colored man through the whole period of my long life, I will now, when near its close, give to them, the free black and colored man, wherever he may be throughout our widely extended country, a parting counsel and advice, in the interest of themselves and their posterity. The counsel I offer them in all the sincerity of my soul is, that they separate themselves from the white man; that they take their wives, their children, and their substance, and depart to the land of their fathers, that great and ancient land, where they and their posterity, through all their generations, may be safe, may be happy, living under their own fig tree and vine, having none to make them afraid.

If my mind has been virtuously disposed in life, I am indebted for it, under the Most High, to the education bestowed upon me by virtuous and pious parents, (blessed be their memory,) and especially to the care they took in instructing me and having me instructed in music. At a time when there was no other teachers in the city of Baltimore but a singing school for youth, held at night, my beloved father would take his sons and daughters by the hand, and lead them there nightly, staying there with them, taking a part in their singing and exercises, and then would lead them home. That love for singing and music, given me in my youth, has been the delight and charm of my existence throughout all its subsequent periods, notwithstanding, from the multitudinous occupations of my life, I have been able to give it but little of my time; still its love and charm pervaded my existence, and gilded my path to comparative happiness here, and, as I say above, led me, as I firmly believe, under the Most High, to what little virtue I have practised.

(Signed) JOHN McDONOGH.

Endorsed—Will and memoranda of John McDonogh, filed 10th December, 1850. J. W. GURLEY, *Clerk.*

E, off'd by compl'ts on trial, and filed 13th April, 1852.
J. W. GURLEY, *Clerk.*

And afterwards, at rules, to wit, on the 6th day of January, 1851, the following entry was made on the chancery order docket:

MARY MURDOCH et als., heirs of John McDonough,
vs.
THE EXECUTORS OF JOHN MCDONOUGH et als. } No. 1981.

This day came the defendants, Christian Roselius, A. D. Crossman, W. E. Leverich, and F. B. D'Aquin, executors, &c., by their solicitor and attorney, Levi Pierce, esq., and entered their appearance herein to said plaintiffs' bill of complaint.

And afterwards, to wit, on the 7th day of January, A. D. 1851, the following order was entered of record in the minutes:

MARY MURDOCH et als., heirs, &c.,
vs.
EXECUTORS OF JOHN MCDONOUGH et als. } 1981.

On motion of Randell Hunt, esq., solicitor for the mayor of the city of New Orleans and the councils of municipalities numbers one, two, and three, of the city of New Orleans, it is ordered, that he have leave to enter appearances on behalf of said defendants.

Whereupon on the said 7th day of January, A. D. 1851, the following appearances were duly entered of record in the chancery order docket:

MARY MURDOCH et als., heirs of John McDonough,
vs.
THE EXECUTORS OF JOHN MCDONOUGH et als. } No. 1981.

This day came the defendants, the Mayor of the city of New Orleans, and the Council of municipality No. one; the Mayor of the city of New Orleans, and the Council of municipality No. two; and the Mayor of the city of New Orleans, and the Council of municipality No. 3, by their solicitors, R. Hunt, C. Roselius, A. Grailhe, and R. Preaux, and by consent and the leave of court, entered their appearance herein to said complainants' bill of complaint.

And afterwards, to wit, on the 4th day of February, A. D. 1851, the following entry was made in the chancery order docket:

MARY MURDOCH et als., heirs of John McDonough,
vs.
THE EXECUTORS OF JOHN MCDONOUGH et als. } No. 1981.

This day came the defendants, Christian Roselius, A. D. Crossman, W. E. Leverich, and F. B. D'Aquin, executors, &c., by their solici-

tors, L. Pierce, C. Roselius, Robert Preaux, and A. Grailhe, and filed their answer to complainants' bill.

(For the answer, see the next and several succeeding pages.)

*Answer.*

Filed 4th February, 1851.

MARY MURDOCH et als.
vs.
THE EXECUTORS OF JOHN MCDONOUGH et als.

To the honorable the judges of the circuit court of the United States, sitting in the eastern district of Louisiana.

The answer of Christian Roselius, A. D. Crossman, W. E. Leverich, and F. B. D'Aquin, executors of the last will and testament of the late John McDonough, and of the Mayor, Alderman, and Inhabitants of the city of New Orleans, respectfully represents, that these respondents, saving and reserving to themselves, now and at all times hereafter, all manner of advantage and benefit that can or may be had and taken to the many uncertainties, insufficiencies, and imperfections in the said complainants' bill of complaint contained, for answer thereto, or unto such part thereof as it is material for these defendants to answer, say, that they are entirely ignorant whether the said complainants are the next of kin of the said John McDonogh, deceased, as by them alleged; but these respondents expressly deny that the will of John McDonogh contains any dispositions that are utterly null and void, and cannot be carried into effect. That it is not true that the testator nominally gives to the cities of New Orleans and Baltimore the residue of his real and personal estate, subject to the payment of certain annuities; yet in subsequent parts explains and modifies said dispositions, and annuls the same, by declaring that no part of his estate, or of the revenues or rents thereof, shall ever go into the possession of said cities, or either of them, as stated in said bill; but that, in truth and in fact, the right of property in said estate, and the enjoyment thereof, are vested by said will in the cities of New Orleans and Baltimore, subject to certain payments in said will enumerated; that the title to the property belonging to the succession of the testator is fully vested in said corporations of the cities of New Orleans and Baltimore; and that the directions contained in said will, in relation to the application and administration of said property, are all for the immediate and direct benefit of said cities respectively. That the leading object of said will is not to separate and divide the enjoyment of all and singular the estate, real and personal, of the testator from the ownership and title thereof; that there are legatees in existence to receive the title and enjoyment of said property—said legatees being the cities of New Orleans and Baltimore; and the directions given by the testator, in his said will, for the administration of said property by commissioners and agents, to be

appointed by the said cities respectively, is only a mode pointed out by the testator for the management of said property, the title of which belongs to said cities, and the administration of which is to be for the sole use and benefit of said cities of New Orleans and Baltimore. That the commissioners and agents of the general estate are not a body corporate, nor are they the donees of the usufruct of the estate forever, but are, as before stated, the mere administrators of the said estate, on behalf and for the benefit of said cities of New Orleans and Baltimore; that there are no devisees of trusts, substitutions, or fidei commissa, that are forbidden by the laws of this State, contained in said will; and that if it should be considered by this honorable court that there are any clauses in said will calculated to create a perpetuity, as alleged in said bill of complaint, said clause or clauses are to be considered, according to the laws of Louisiana, as impossible conditions, and as not written. That there is a legacy and a beneficiary and proprietary interest in the property belonging to the succession of the testator bequeathed to the cities of New Orleans and Baltimore; and said legacies have been accepted by the said cities in due form of law, and have not lapsed in any manner. That if the term fixed by the testator for the execution of his benevolent dispositions is too long, and contrary to public policy, the same is to be considered as not written, according to the laws of Louisiana, and may be modified and corrected by the decree of this honorable court. And these respondents further say, that the entire scope and plan of said will, and all its objects and purposes, are beneficial to the public, and not contrary to law; but that if any one of the clauses and dispositions in said will should be contrary to law, in the judgment of this honorable court, then the same are to be considered and reputed as not written; but that the intention of the testator, which is clearly manifested, that under no circumstances his relations or next of kin should have any right of inheritance in or to his succession, must be maintained; and these respondents deny expressly, that the title and ownership to and in the property belonging to the succession have ever vested in the said complainants by any right of inheritance, nor are the said complainants seized or possessed of any part of the said estate, as alleged by them in their bill of complaint, nor have the said complainants ever had any right to the seizin or possession of said property, or of any part thereof; and for further answer these respondent aver, that they are in no manner bound to account to the said complainants for the revenues of said property; that the said executors have not collected the amounts alleged in said bill of complaint, and the said executors maintain and contend that they are only liable and bound to account for their administration of said succession to the universal legatees under said will, namely, the cities of New Orleans and Baltimore, and to the fifth district court of New Orleans, by whose authority they have been appointed; and these respondents submit to this honorable court that all and every of the matters in said complainants' bill mentioned and complained of, are matters which may be heard and determined at law, and with respect to

which the said complainants are not entitled to any relief from a court of equity; and these respondents pray that they may have the same benefit of this defence as if they had demurred to the complainants' bill on said ground; and these respondents deny all and singular every other material allegation in said complainants' bill alleged; these respondents therefore humbly pray, that the said bill of complaint may be dismissed at the costs of the complainants; and these respondents pray for all such other and further aid, relief, and remedy as the nature and equity of the case may require.

L. PIERCE,
*Solicitor for executors.*
A. GRAILHE,
C. ROSELIUS,
ROBERT PREAUX,
*Solicitors for the city of New Orleans.*

*Answers to the interrogatories propounded to the executors of the last will and testament of John McDonogh.*

To the 1st interrogatory they answer: "Yes."

To the 2d interrogatory they answer: Yes.

To the 3d interrogatory they say: The inventory is not yet completed.

To the 4th interrogatory they answer: That the possession of the real estate belonging to said succession has been taken from them by an an order of sequestration, issued by the honorable the fifth district court of New Orleans, in the suit of the "State of Louisiana vs. the Executors of John McDonogh and others," and they are now administering the said real estate under the supervision and control of the sheriff of the parish of Orleans; and for further answer to said interrogatory they say, that they do not consider themselves bound to file any account, as a part of their answer to this interrogatory, because these respondents contend that said complainants have no right to exact any such account at this stage of the proceedings; these respondents, therefore, decline filing such account, unless ordered to do so by this honorable court.

To the 5th interrogatory they answer: That they are ignorant whether the complainants are, or are not, next of kin to the testator; but that they are not his heirs, as these respondents believe, because the testator having no forced heirs, and having bequeathed the whole of his succession to testamentary heirs, there can be no legal heirs.

C. ROSELIUS,
A. D. CROSSMAN,
F. B. D'AQUIN,
WM. E. LEVERICH.

Sworn to and subscribed by C. Roselius and A. D. Crossman, before me, this 4th day of February, 1851.

J. W. GURLEY, *Clerk*,
By W. CORNELIUS, *Dep'y clerk.*

Sworn to and subscribed by F. B. D'Aquin, before me, this 7th February, 1851.

J. W. GURLEY, *Clerk*,
By W. CORNELIUS, *Dep'y clerk*.

Sworn to and subscribed before me, by W. E. Leverich, this 7th February, 1851.

J. W. GURLEY,
*U. S. com'r.*

*Answers to the interrogatories propounded to the mayor of the city of New Orleans.*

To the 6th interrogatory he answers: That he does not know.

To the 7th interrogatory he answers: Yes.

To the 8th interrogatory he answers: That the city of New Orleans claims all that is left to it by the will of the late John McDonogh, and that he has recommended the appointment of commissioners to take possession of said succession, in pursuance of the terms of said will, and that said commissioners have been duly appointed, and have accepted said appointment.

To the 9th interrogatory he answers: That the city of New Orleans claims all the property left to it by the will of the late John McDonogh; and he refers for further particulars to said will.

A. D. CROSSMAN, *Mayor*.

Sworn to and subscribed by A. D. Crossman, before me, this 4th February, 1851.

J. W. GURLEY, *Clerk*,
By W. CORNELIUS, *Dep'y clerk*.

And afterwards, to wit, on the 10th day of March, A. D. 1851, the following order was entered of record in the minutes:

MARY MURDOCH et als., heirs, &c.,
vs.
THE EXECUTORS of McDonough et al. } 1981.

On motion of Levi Pearce, esq., of counsel for defendants, it is ordered that this cause be now placed on the issue docket and called for trial.

*Replication.*

Filed 14th March, 1851.

MARY MURDOCH and al., heirs of John McDonough,
vs.
THE EXECUTORS of McDonough and al. } In chancery.

United States circuit court, for the fifth circuit and eastern district of Louisiana.

The replication of Mary Murdoch and William F. Murdoch, her

husband, and the other complainants, to the several answers filed by the several defendants in the above entitled cause; these repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies in the joint and several answers of the several defendants herein, for replication thereunto say, that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ever ready to aver, maintain, and prove as this honorable court may direct; and humbly pray as in and by their said bill they have already prayed.

REVERDY JOHNSON,
GRYMES, & BENJAMIN & MICOU,
And MOTT & FRASER,
*Solicitors for repliants.*

Endorsed. 1981. Filed 14th March, 1851.
J. W. GURLEY, *Clerk.*

And afterwards, to wit, on the 17th day of March, A. D. 1851, the following entry was made in the minutes:

MARY MURDOCH et als., heirs, &c.,
vs.
THE EXECUTORS of McDonough et als. } 1981.

On motion of W. C. Micou, esq., of counsel for complainants, it is ordered that complainants have leave to file an amended and supplemental bill herein.

(For amended and supplemental bill see the next and several succeeding pages.)

*Amended and supplemental bill.*

MARY MURDOCK and als., heirs of John McDonogh,
vs.
THE CITY OF NEW ORLEANS, the Executors of McDonogh and als. } In chancery.

UNITED STATES CIRCUIT COURT.

The amended and supplemental bill of complaint of said complainants, filed with leave of court, now respectfully shows:

That in preparing the said original bill of complain some errors oc-

curred in stating the names and description of your orators, which they pray leave now to correct as follows, to wit:

Your oratrix, Eliza Hague, as designated in said bill, should be named Eliza Hayne, wife of George Hayne, who appears with her, and duly authorizes and assists her in the premises.

The name of your orator written Joseph E. Anderson, should be written Joseph C. Anderson.

The names of your orators Louisa Welsh and Welsh, children, &c., should be written Laura J. Welsh, Thomas Welsh, Frank E. Welsh, and William P. Welsh, all here represented by said William F. Murdock, their acting guardian, and the name of their father is Thomas Welsh.

The name of the father of your oratrix, Rosalba P. Lynch, is Lemuel Ludden.

And your orators, Margaret McDonough Jenkins and M. Conway Jenkins, should be designated as Mary McDonough Jenkins and Conway M. Jenkins, their proper names.

All which corrections your orators pray leave to make, and that the same stand and be considered as if the same had been fully and properly stated in said original bill of complaint.

And your orators would further show to your honor, that in the answer of the executors, filed to their said original bill of complaint, it is alleged, that one John L. Lewis, a citizen of the State of Louisiana, and resident in New Orleans, has taken possession of all and singular the immoveable property, or real estate, of the succession of John McDonough, in the State of Louisiana, and is now the detainor and administrator thereof. And your orators aver, that by reason of the possession of said property by said John L. Lewis, it has become necessary to make him a party to this bill, and to require him to answer the interrogatories to him addressed and here annexed.

Wherefore your orators pray, that a writ of subpœna be directed to said John L. Lewis, commanding him to appear and answer to the original and this amended bill, and to said interrogatories; that the like relief be afforded and granted against said John L. Lewis as is prayed in said original bill against said executors; that he be condemned to render an account of all rents by him collected, and to pay over the same to your orators; that he be decreed to deliver to your orators all and singular the property, moveable and immoveable, of the said succession which may have come, or which shall come, into his hands; that a copy of this amended bill of complaint be served upon all the said original defendants, and that all further relief required by the nature of the case be granted.

REVERDY JOHNSON,
J. R. GRYMES,
BENJAMIN & MICOU,
MOTT & FRASER,
*Solicitors and counsel.*

*Interrogatories to John L. Lewis.*

1. Have you not taken possession of the real estate belonging to the succession of John McDonough, and do you not still hold the same in your possession? If so, annex to your answer an inventory of the property of which you have so taken possession.

2. Annex to your answer a full statement of all the rents and revenues which you have collected from said property.

Filed 17th March, 1851.

And on the 9th day of April, A. D. 1851, an entry was made in the chancery order docket in the words and figures following, to wit:

MARY MURDOCH et als., heirs of John McDonough,
vs.
THE EXECUTORS of McDonough et als. } No. 1981.

On this 9th April came into the clerk's office Elmore and King, and Isaac Johnson, solicitors for defendant John L. Lewis, and filed his plea to complainants' bill, as of rule day, nunc pro tunc.

*Plea of John L. Lewis, filed 9th of April, A. D.* 1851.

To the honorable the circuit court of the United States, in and for the eastern district of Louisiana. In chancery.

The plea of John L. Lewis, the defendant to the original and amended bills of complaint of Mary Murdoch and others, heirs, &c.

This defendant, by protestation not confessing or acknowledging all or any of the matters and things in the said complainants' bills of complaint mentioned and contained to be true, as the same are therein set forth and alleged, for plea to the whole of said bills, says: He has not, in his individual capacity, or in his own right, in his possession or under his control, any portion of the effects or property of the succession of John McDonough, deceased, nor does he, in the capacity aforesaid, claim any right, title, or interest in any portion of the same; but he alleges, that as sheriff of the parish of Orleans, by virtue of, and in obedience to, a certain writ to him directed as sheriff aforesaid, from the honorable the fifth district court of New Orleans, in a suit therein pending, entitled "the State of Louisiana against the executors of John McDonogh, deceased, and others," as will more fully appear from the transcript of the record and pleadings in the said case hereunto annexed as part of this plea, and to the copy of the said writ, to him directed, also annexed as part of this plea, he did seize, and take unto his possession, the real estate of the said succession, as more fully appears from the copy of the endorsement or memorandum on the back of the said copy of the said writ, and from the copy of the notice to the executors of the seizure, also annexed to this plea. That he did take possession of, and now holds, the said property, in compliance with said writ, and in obedience to the laws which regulate and prescribe his duties as the sheriff of the parish of Orleans. It is his duty

to hold the said property until ordered by the said district court of New Orleans to deliver the same, or until he is superseded in his office; in which event he will be bound to deliver the same to his said successor.

Under the circumstances above set forth, he alleges he cannot be legally made a party to this suit, or required to answer to the same.

The circuit court of the United States has no jurisdiction over him, as the sheriff of the parish of Orleans, for acts done in the discharge of his official duties, and in obedience to the mandates of the district court of New Orleans, of which court he is the sheriff.

The right by which he holds the said property, as above set forth, is a good and legal defence to the bills of complaint, so far as they relate to this defendant.

The said property is now subject to the decision and control of the said district court of New Orleans, and cannot be legally taken therefrom or interfered with by this honorable court.

Wherefore the said defendant prays judgment of this honorable court, whether he should be compelled to make any further answer to the said bills, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ELMORE & KING,
ISAAC JOHNSON,
*Solicitors for defendants.*

John L. Lewis being duly sworn doth depose and say, that he is the defendant referred to in the foregoing plea; that the facts therein stated are true; and that the plea is not interposed for delay.

JNO. L. LEWIS.

Sworn to and subscribed before me, this 9th day of April, 1851.

THEO. H. McCALEB,
*U. S. Judge.*

We do hereby certify, that we are of counsel for John L. Lewis, the defendant, mentioned in the foregoing plea, and that, in our opinion, the plea is well founded in law.

ELMORE & KING,
ISAAC JOHNSON.

Endorsed: Filed 9th April, A. D. 1851, with two exhibits.

J. W. GURLEY, *Clerk.*

*Copy of original writ.* (*Exhibit filed with plea of Jno. L. Lewis.*)

FIFTH DISTRICT COURT OF NEW ORLEANS.

The State of Louisiana, to the sheriff of the parish of Orleans, greeting.

THE STATE OF LOUISIANA
vs.
THE TESTAMENTARY EXECUTORS OF JOHN McDONOUGH. } No. 4,257.

You are hereby commanded, in the name of the State of Louisiana,

and of the fifth district court of New Orleans, to sequester and take into your custody and safe-keeping all the property mentioned in the memoranda of instructions to the executors of the last will of the late John McDonough, copy of which is filed in this case, and also all that property which is mentioned in the list of his real estate, contained in a book marked or labelled "Leger," "John McDonough," now in the possession of the executors of said estate, and also all the other real property, of whatsoever nature, of which the said John McDonough may have died possessed of, and situate and being in this parish; and when you shall so have sequestered said property, that you hold the same subject to the further order of our said court in the premises; and in what manner you shall have executed this writ, you make return thereof to our said court, on or before the fourth Monday of January next.

Witness the honorable A. M. Buchanan, judge of our said court, at the city of New Orleans, this sixth day of December, in the year of our Lord eighteen hundred and fifty, and in the seventy-fifth year of the independence of the United States.

(Signed) P. LE BLANC, *Clerk*.

*Copy of notice.*

NEW ORLEANS, 6*th December*, 1851.

STATE OF LOUISIANA
vs.
TESTAMENTARY EXECUTORS of John McDonough. } No. 4,257.

State of Louisiana, sheriff's office, parish of Orleans, in the 5th district court of New Orleans.

To the testamentary executors of John McDonough:

Please to take notice, that by virtue of a writ of sequestration issued in the above mentioned suit, I have sequestered and taken into my possession all the property contained in the memoranda of instructions to the executors of the last will of the late John McDonough, and also all the property which is mentioned in the list of his real estate, contained in a book marked or labelled "Leger," "John McDonough," and also all the other real property, of whatsoever nature, of which the said John McDonough may have died possessed of, and situate and being in this parish.

(Signed) A. L. LEWIS,
*Deputy sheriff*.

(Copy.)

Copy of the within notice was served on the executors of the last will of the late John McDonough, by leaving [the] same at the office of the said executors, corner of Royal and Custom-house streets, in the

hands of C. Roselius, esq., one of said executors, this 6th December, 1850.

(Signed) A. L. LEWIS, *D'y shff.*

I certify the within notice and above return to be copies from the originals.

Sheriff's office, parish of Orleans, 2d of April, 1851.

JNO. L. LEWIS, *Sheriff.*

Sheriff's return, endorsed on the foregoing writ.

STATE OF LOUISIANA
vs.
TESTAMENTARY EXECUTORS OF JOHN MCDONOUGH.

5th district court, No. 4257. Sequestration. Isaac Johnson and Elmore & King, attorneys.

Rec'd 6th Dec., 1850, and on the same day sequestered all the property, as ordered to be sequestered in the within writ, found in this parish, and contained in the book and memoranda within referred to, and proceeded to make an inventory or schedule of the same, which inventory is now in progress, but unfinished for want of time, and which will be, when finished, annexed to and made part of this return, when said return and the further execution of this writ will have been completed. The rents and revenues of which property, sequestered in virtue of this writ, has been and still is received by me.

2d April, 1851. JNO. L. LEWIS, *sheriff.*

I certify the within writ and above return to be copies from the originals in my hands.

Sheriff's office, parish of Orleans, this 2d April, 1851.

JNO. L. LEWIS, *Sheriff.*

Endorsed "1981. Filed 9th April, 1851, with plea of Lewis."
"J. W. GURLEY, *Clerk.*"

*Record from 5th district court of New Orleans.*

State of Louisiana, fifth district court of New Orleans.

STATE OF LOUISIANA
vs.
EXECUTORS OF JNO. MCDONOGH ET ALS. } No. 4257.

Petition filed 4th December, 1850.

To the honorable the judge of the fifth district court of New Orleans:

The petition of the State of Louisiana, herein represented by the attorney general, Isaac Johnson, respectfully represents:

That John McDonogh, who departed this life on or about the —— day of October last, left a will, which was duly probated on the 28th day of

October, 1850, in this honorable court, as will more fully appear from reference to the proceedings had in the matter of the succession of said John McDonogh. By said will, after making certain small legacies to his relations in Baltimore, and to certain of his slaves therein named, he proceeds to will and bequeath all the rest, residue, and remainder of his estate, real and personal, as well that which he owned at the date of the will, to wit, the 29th of December, 1838, as that which he might subsequently have acquired, up to the time of his death, of whatsoever nature it might be, and wherever situate, unto the Mayor, Aldermen, and Inhabitants of New Orleans, in the State of Louisiana, and the Mayor, Aldermen, and Inhabitants of Baltimore, in the State of Maryland, and their successors, in equal proportions of one half to each of said cities of New Orleans and Baltimore forever; to and for the several interests and purposes thereinafter mentioned, declared, and set forth concerning the same. The will proceeds to set forth the interests and purposes for which the above legacies to the said cities were made, as will be seen by reference to the copy of the said will, which is hereunto annexed.

The above bequests to the said cities constituted very nearly all of his estate, the legacies previously mentioned not amounting to one-five-hundredth part of the vast property belonging to his succession.

By another and subsequent clause in the will, the testator made the following declaration:

"And it is furthermore my wish and desire, and I hereby will, that in case there should be a lapse of both the legacies to the cities of New Orleans, in the State of Louisiana, and Baltimore, in the State of Maryland, or either of them, wholly or in part by refusal to accept, or any other cause or means whatsoever, then both or either of said legacies, wholly or partially so lapsed, shall inure, so far as relates to the city of New Orleans, to the State of Louisiana, and so far as relates to the city of Baltimore, to the State of Maryland; that the legislatures of those States, respectively, may carry my intentions, as expressed and set forth in this my last will and testament, into effect, as far and in the manner which will appear to them the most proper."

Now, the plaintiff alleges, that the said legacies and bequests to the said cities of New Orleans and Baltimore are illegal, null, and void; and that consequently they lapse, and the State of Louisiana is entitled under said will to all that portion of the estate of the said John McDonough which was embraced in the said legacy to the city of New Orleans, to wit, to one-half of the entire estate after the legacies to the relations of the testator near Baltimore, and to his slaves, are paid off.

The State of Louisiana alleges, that the said legacies to the said cities are null and void, for the following reasons:

1st. It was the intention and purpose of the testator, as shown by the will, and carried out by the legacies, to convert all his personal estate into real estate, and render the real estate so purchased, as well as the vast quantity of real estate of which he died possessed, forever inalienable, to create a capital of real estate perpetually increasing,

which would ultimately embrace all the landed property in the country; to establish a fund so large as to be ruinous to commerce, and dangerous to the peace and prosperity of the State. All of which purposes are illegal, contrary to public policy, and render the said legacies void.

2d. It was the intention of the testator in making those legacies to convey his property, to be held by a title unknown to the law, as the law requires an owner for every species of property; and as the title created by the legacies is not recognised by the law, they are null.

3d. The said legacies are substitutions, and fidei commissa, which are expressly forbidden by the law.

4th. The said legacies are made upon impossible conditions, are contrary to public policy, and are made to persons and corporations having no capacity to receive them; they are, therefore, null.

As the said legacies are void, all the annuities and other legacies dependent on them must necessarily fall with them; but, if not, then the plaintiff alleges, that all of the annuities and all the legacies which were to be paid out of the said legacies to the said cities, are subject to the same objections, and are null and void for the same reasons which have been herein before urged against the validity of the legacies to the said cities.

Reserving the right if necessary to file a more complete description of the property claimed, so soon as the inventories of the property of the estate shall be returned to court, the plaintiff claims an interest in all the property of the succession of John McDonough, and especially in all that property mentioned in the "memoranda of instructions to the executors of John McDonough," a copy of which is herewith filed; and also in all that property which is mentioned in the list of his real estate contained in a book marked or labelled, "Leger. J. McDonough," now in the possession of the executors of said estate, and a like interest in all the other property, whether real or personal, of which he may have died possessed.

The petitioner alleges that the same has been duly demanded, but that the defendants refuse to deliver the same. Wherefore, petitioner prays that the executors of said John McDonogh, to wit, C. Roselius, A. D. Crossman, W. E. Leverich, and F. B. D'Aquin, who reside in the city of New Orleans, and the Mayor, Aldermen, and Inhabitants of the city of New Orleans, be served with a copy of this petition, and duly cited to answer the same.

And that the Mayor, Aldermen, and Inhabitants of Baltimore and the State of Maryland be made parties to this proceeding, being interested therein, and that curators ad hoc be appointed to each of said parties to defend their interests in this proceeding; and that after all due proceeding had, the legacies to the cities of New Orleans and Baltimore be declared null and void; and that the State of Louisiana be decreed to be entitled to the property as above claimed, and have judg-

1824.

ment rendered therefor in favor of the State; and for all other and equitable relief in the premises, &c.

(Signed) ISAAC JOHNSON,
*Attorney general.*
ELMORE & KING,
*Of counsel for plff.*

*Supplemental petition, filed 6th December,* 1850.

To the honorable the Judge of the 5th district court of New Orleans:

The State of Louisiana, herein represented by Isaac Johnson, the attorney general, after due permission obtained, files this supplemental petition in the suit now pending in this honorable court, by the State against the executors of John McDonogh and others, in which it is respectfully represented: That the seizure of the real estate of John McDonogh, deceased, was not by his will given to the executors, and that there is no one at this time, except the States of Louisiana and Maryland, having the legal right to the seizin thereof, or to take charge of, or administer the same. The executors have no such right, and if they assume any such right they are intermeddlers and trespassers. The said real estate belongs to the States of Maryland and Louisiana, and they alone have the right to the possession thereof. There is great danger, as the said real estate is now situated, that it will be dilapidated, and that the revenues and fruits produced by the property will be lost.

Therefore, your petitioner prays that this honorable court will order a writ of sequestration to issue, upon which all the real estate belonging to the succession of the said John McDonogh, deceased, shall be sequestered and so held until the question of ownership shall have been decided. For a more particular description of the property to be sequestered, reference is here made to the original petition filed in this case; and for property out of this parish, petitioner prays that such writs may be issued as will legally sequester said property. That the original parties to this suit be served with a copy of this petition, and for all other relief in the premises, &c., &c.

(Signed) ISAAC JOHNSON,
*Attorney general.*
ELMORE & KING,
*Atteys. for petitioner.*

*Order.*

Let this supplemental petition be filed. And considering the provisions of the 274th article of the code of practice, it is ordered, ex officio, that all the real estate belonging to the succession of John McDonogh, deceased, be sequestered by the sheriff of this parish, and remain so sequestered until the further order of the court.

(Signed,) A. M. BUCHANAN, *Judge.*
December 6th, 1850.

It being suggested that there is real estate belonging to said succession, situated in various other parishes of this State, viz., in the parishes of Jefferson, Iberville, East Baton Rouge, Lafourche Interior, Plaquemines, St. Bernard, St. Charles, St. John Baptist, St. Landry, Assumption, St. James, and Livingston, it is ordered, that writs of sequestration, as above ordered, be directed to each of the sheriffs of those parishes respectively, commanding him to sequester and take into possession all the real estate belonging to the succession of John McDonogh, and situated within his bailiwick, to remain so held until the further order of the court.

(Signed,) A. M. BUCHANAN, *Judge.*
December 6th, 1850.

And the clerk of the court is moreover ordered to address similar writs of sequestration to the sheriff of any other parishes on which it may be declared to him that the succession of John McDonogh is possessor of real estate.

(Signed,) A. M. BUCHANAN, *Judge.*
December 6th, 1850.

*Exception and answer of executors, filed 13th December,* 1850.

STATE OF LOUISIANA
vs.
EXECUTORS OF JOHN McDONOGH et als. } 5th district court.

The executors of the will of John McDonogh, deceased, except that the attorney general has no right or authority to institute this action; and further answering, they deny all the material allegations in said petition contained, and pray to be hence dismissed with costs, and for all other and further relief.

(Signed,) LEVI PIERCE, *for Executors.*

*Exception and answer, filed 21st December,* 1850.

STATE OF LOUISIANA
vs.
ESTATE OF JOHN McDONOGH. } 5th district court.

The executors of the last will of John McDonogh file this their additional exception and plea, that the State of Louisiana has no right or authority to institute such suit, nor can judgment be had thereon as prayed for.

And for further plea and answer, if any be required, they deny all and singular the allegations of plaintiffs, and pray to be hence dismissed; and they also pray for all further and other relief in the premises.

(Signed,) L. PIERCE.

1825.

*Judgment on rule to quash sequestration, and reasons, filed 4th January*, 1851.

STATE OF LOUISIANA
vs.
EXECUTORS OF JOHN McDONOGH et als.

On rule to quash sequestration: The first ground of this rule is, that the State of Louisiana is not legally in court, the attorney general having no authority to institute this action.

This ground goes not so much to the sequestration, as to the action itself. It is in the nature of a peremptory exception of the suit. The attorney general has replied to it by quoting, 1st, the resolution of the legislature, approved 21st January, 1831, (B. & C. Dig., p. 27;) and second, the act of 21st March, 1850, entitled "an act to provide for and regulate the office of attorney general.

The resolution of 21st January, 1831, is as follows: "That it shall be the duty of the attorney general to intervene in all suits which may be pending, or which may hereafter be instituted, in any of the courts of this State, held in the city of New Orleans, or federal courts of the United States, where he may think that the interest of the State is involved, for the purpose of prosecuting or defending such interest, and that he shall have full power to take such steps in the maintenance of the rights of the State in said courts, as in his discretion circumstances may require. And that it shall further be the duty of the said attorney general to institute such suit or suits in behalf of the State as to him may seem proper, for the recovery of all the real estate belonging to the State of Louisiana, and which is adversely claimed and possessed."

The act of 21st March, 1850, in its 1st section, (Session acts, page 259,) enumerates the duties of the attorney general, among which are, "2d, to prosecute and conduct, before the courts of the State, sitting in the first judicial district of the State, all civil suits arising in the said judicial district, in which the State is interested, when the amount claimed, or the value of the property at issue, shall exceed two thousand dollars."

In my opinion, those laws constitute a full authority for the institution of this suit by the attorney general in the name of the State. The second ground of this rule is, that the writ of sequestration was illegally and improvidently issued, because the testamentary executors of John McDonogh were in the legal possession of the property belonging to the said succession, under the laws of the State, the order of this court, and the will of the testator.

The writ of sequestration in this case was granted under the 274th article of the Code of Practice, which is as follows: "The court may order, ex officio, the sequestration of real property, in suits where the ownership of such property is in dispute, and where one of the contending parties does not seem to have a more apparent right to the possession than the other." "In such cases sequestration may be

ordered to continue until the question of ownership shall have been decided."

The sequestration was prayed for by the State, through its attorney general, in a supplemental petition as a conservatory measure, rendered necessary by the dispositions of the will, which refused the seizin of the real estate of the testator to his executors named in the will; and by the further fact, that there was nobody at the time the supplemental petition was filed, (the 6th December, 1850,) having the legal right to the seizin of said real estate.

The second ground of this rule traverses the facts thus alleged in the supplemental petition, and asserts the seizin of the real estate of this succession to be in the executors by a three-fold title.

The will of John McDonogh was proved and admitted to execution in this court. Nine out of seventeen executors named in the said will have qualified; only three of the executors were empannelled by the will to administer the estate, or rather (to use the expressions of this very peculiar testament) "to act and carry out my intention under this my last will and testament." The depositions of the will as regards the seizin of the executors are as follows: "And to enable my executors to execute this my last will and testament, I hereby give unto them seizin of all my personal estate, money, stock, and bonds on hand; as well as all debts owing to me by bills, notes, bonds, and mortgages, deeds or book accounts; as also the furniture and effects in and about the house in which I reside, cattle, horses, &c., &c., putting them in possession thereof, and authorizing them, my said executors, to recover and receive the amount of all said stocks, bonds, bills, notes, bonds and mortgages, deeds, book accounts, &c., with all the dividends and interest which may accrue thereon; and to sell said furniture and effects."

In another part of the will are the following expressions, which contemplate a temporary seizin of the slaves of the testator for a specified purpose in the executors: "It is my will, and I direct my executors immediately after my death, to correspond with the American Colonization Society for the purpose of ascertaining when said society intends sending a vessel to Liberia; and by the first vessel so sailing from New Orleans for Liberia, to send all the rest and residue of my black people, old and young, (with the exception of the ten afore mentioned individuals, to whom I have directed their freedom to be given here, in New Orleans,) men, women, and children, (and also with the exception of the black man Philip, his wife Fanny, and their children, all of whom I have lately purchased, as it is my will that they, the said Philip and Fanny, his wife, and their children, with my other black or colored people, whom I may acquire by purchase subsequent to this my last will and testament, shall serve those to whom I have hereinafter willed the rest, residue, and remainder of my estate, real and personal, fifteen years after my death; when, then, after said service of fifteen years, my executors will deliver said black and colored people up to the American Colonization Society, to be also sent to Liberia, on the coast of Africa."

And again, as indicative of the testator's intentions, as relates to the seizin of real estate belonging to his succession, we find the following dispositions in the will:

"My intentions being, I in consequence instructing my executors to invest my personal effects, say money, notes, bonds, or stocks on hand, interest accruing thereon, furniture of house in which I reside, and effects about it, as well as the amount of all debts owing to me as fast as they are received; in real estate, say lots of ground and houses, and lots of ground lying in the city or suburbs of New Orleans, and hand over said real estate, as soon as purchased, with the title deeds thereto, to the commissioners and agents of my general estate, to be named by the respective corporations of said cities of New Orleans and Baltimore, in the manner hereinafter directed."

And further on are found the following dispositions of the will in reference to the seizin of the real estate of the succession:

"I, therefore, in consequence, request, authorize, and direct, the respective councils of the three municipalities of the city of New Orleans, on the first Monday of January of each and every year, to elect one respectable citizen, who shall be commissioners of the general estate; which three commissioners, so elected, shall serve ———, and the three commissioners so named in conjunction with the three agents to be appointed (as hereinafter directed) by the mayor and aldermen of the city of Baltimore, shall have the sole management of said general estate; the leasing and renting of all its lands, lots of ground, houses, &c., &c.; the cultivating of its estates with the black people thereon; the collecting of its rents, leases, &c., &c., and the giving receipts therefor; the paying of the annuities as hereinbefore ordered and bequeathed; and, in fine, doing all acts necessary to its full and perfect management, as herein pointed out and directed. My executors will hand over to said commissioners and agents of the general estate all the title deeds of my real estate, with all other documents not necessary to them, the said executors. They, the commissioners of the general estate of the city of New Orleans, and agents of the general estate of the city of Baltimore, to consider themselves at once in possession (as I hereby give them seizin and put them in possession) of all said real estate from the day of their nomination; which nomination I recommend the city councils of the city of New Orleans, and the mayor and aldermen of the city of Baltimore, to make immediately after my decease."

The manner of appointing the agents of the general estate created by this will on the part of the city of Baltimore is particularly set forth in another part of the will, as follows:

"And for the purpose of managing the affairs of the general estate or fund in the State of Louisiana, in which the city of Baltimore is equally interested with the city of New Orleans, I hereby authorize and direct the mayor and aldermen of the city of Baltimore, in the State of Maryland, to elect, appoint, and name, from time to time, as they may see fit and proper, (and to change them, and name, elect,

and appoint others in their lieu and place, at any time, as they may see fit and proper,) three persons as agents, in the city of New Orleans, or whom they may send to the city of New Orleans, to represent their interest in said general estate, and to act for them in all respects and in all things which concern said general estate, with the three commissioners to be appointed, as herein before provided for, by the city councils of the city of New Orleans."

The passages of the will of John McDonogh above copied by me are the only portions of that instrument which seem to bear upon the subject now under consideration, to wit, the seizin of the property of the succession. From an examination of those passages it results, that the executors cannot rightfully claim the seizin of the real estate under the will; that the testator's intention evidently was to rest the seizin of that portion of his property in certain commissioners and agents to be appointed by his universal legatees, the cities of New Orleans and Baltimore. My decision on this point disposes of that portion of the second ground of this rule, which claims the seizin of the property sequestered for the executors by virtue of the will of John McDonogh; another title by which the executors claim the seizin of the property sequestered is the law of this State. The legislative enactments of Louisiana on the subject of the seizin of the property by testamentary executors are contained in three articles of the Civil code, 1652, 1653, and 1664. The article 1664 has been modified by the act of 1828, page 15th, of the Session acts.

The article 1652 declares that when the seizin has not been given by the will, the executor cannot claim it. The right of the executor to the seizin of the estate is made to depend upon the terms of the will, which may be general, giving him the seizin of all the property of the succession; or may be restrictive, giving the seizin of a determinative portion of the property. The article 1653 prescribes in what form of words the right of seizin is conferred by the testament upon the executor; and adds the important declaration, that the right of seizin cannot be inferred from the silence of the testator in relation to that right.

A decision of the supreme court of this State, reported in 10th Louisiana reports, page 34, (Anderson's Executors vs. Anderson's Heirs,) has been brought to my notice since the argument of this cause. In that decision our supreme court is supposed to have decided that the testamentary executor is the sequestrator of the property of the testator. I have examined the decision, and find that expression to have been merely a quotation from "Pothier's Treatise des Testamens," chapter 5th, article 2d, in which that author treats "of the seizin of testamentary executors," and introduces the subject by the following remarks: "The power of testamentary executors consists principally in the seizin which the coutumes grant to the testamentary executor for the accomplishment of the testament. This seizin is compatible with that of the heir, for the accomplishment of the testament. This seizin is compatible with that of the heir, for the seizin granted to the executor is not a true possession. The executor by this seizin is constituted a sequestrator.

He is only in possession in the name of the heir. It is the heir who is the true possessor of all the property of the succession, according to the rule of law, le mort saisit le vif." In farther explanation of the seizin of the testamentary executor, Pothier informs us that such seizin was unknown to the Roman law, and is in France de droit coutumen, the creature of provincial codes which existed in various parts of that country previous to the revolution. By the custom of Paris the testamentary executor was entitled by the custom of Orleans to that of the moveables and of the immoveables. The seizin took place by operation of law without any expressions in the will; and what is a little remarkable, as shewing the extreme difference of the principles of law which govern us upon this subject from those recognised in France under the old regime, Pothier is of opinion, that although the testator may by his will restrict the seizin of his executors, yet he cannot increase it beyond the bounds fixed by the law; "for," says he, "the testator cannot by his sole violation seize his executor of his property after his death, the law alone being able to accord to the executor this seizin; consequently the testator cannot accord it beyond what the law accords;" same chapter and article, paragraph 3d. The case of Anderson's Executors vs. Anderson's Heirs appears to me to present very different facts from the present case. John Anderson, a resident of East Baton Rouge, in this State, left by will all his property, real and personal, to be equally divided between his brother and his two sisters, all residing in Richmond, Virginia. He named three executors without any express grant of seizin. Two of the executors qualified, took possession of the plantation and slaves of the deceased, and administered them from August to October, 1833, when the heirs instituted by will presented themselves, were duly recognised, and put in possession of the estate. The contest in that case was a claim set up by the executors against the heirs, after the latter were put in possession, for commissions upon the amount of the inventory, resisted by the heirs on the ground that the will had not given the executors the seizin. The heirs relied upon article 1676 of the code, but the supreme court decided in favor of the executors upon the article 1677, inasmuch as there had been an actual possession by the executors of the property, all the heirs being absent from the State at the time the will was probated, and for some time afterwards. The present case differs from that of Anderson in the essential particular, that the heirs instituted by the testament of McDonogh, the cities of New Orleans and Baltimore, are partly present in the State and partly absent; but the capital distinction between the case in 10th Louisiana, and the rule now under consideration, is in the object claimed. The executors of Anderson did not claim to hold the seizin of the estate any longer than for the interest of all parties concerned; they were obliged to retain it, to wit, during the absence of the heirs. They had already given up the possession, and claimed merely commissions, as due them in consequence of the actual possession which they had temporarily held of the property of the testator from the necessity of the case.

For the same reasons, and under similar circumstances, commissions upon the whole amount of the inventory were allowed the executors of Nicholas Girod by the present supreme court—see 4th Annual, 386. And when the question of commissions to be allowed the executors of McDonogh shall come up for consideration, it is entirely likely that a similar necessity for an actual and temporary *manucaption* by those gentlemen will be found to have here existed. If so, they may probably be able to invoke, with success, the article 1677 of the Code, as did the executors of Anderson in the case cited. But we have not yet arrived at this point in the settlement of this succession. The object of the present rule is not to allow the executors compensation for a temporary forced seizure of the property of their testator, but to have it decided that their seizin is of right, and in law permanent and exclusive of that of the heirs instituted by the testament; for I understand those heirs to be the cities of New Orleans and Baltimore; and, failing them, the States of Louisiana and Maryland. In the present suit one of those heirs is plaintiff. Citation is prayed against one of the other heirs, the city of New Orleans, and notice to the two remaining, the city of Baltimore and the State of Maryland. The true contest will be between the State of Louisiana and the city of New Orleans. The point to be decided [is] whether the rights of the latter have lapsed to the profit of the former. The plaintiff, the State of Louisiana, has invoked the application of the 274th article of the Code of Practice as a conservatory measure, pending this litigation. The executors do not profess to represent the city of New Orleans nor the city of Baltimore, whose rights, under the will, are assailed. Those parties have not yet made any appearance. The pretensions, then, of the executors are independent of the right of any instituted heir. They are no less exclusive of such rights; for the right of possession of the executors is not put upon the ground that the cities of New Orleans and Baltimore have neglected to appoint commissioners and agents, as they were required to do by the will of McDonogh. Yet such is the fact. More than two months have elapsed since the death of Mr. McDonogh, and the proof of his will in this court. The extract of the will which I have copied above shows that the intention of the testator was to give the seizin of all his real estate to commissioners and agents, to be appointed by the cities of New Orleans and Baltimore; and that no delay might occur in carrying such instructions into effect, the testator recommended those cities to appoint the commissioners and agents immediately after his decease. No such appointment has been made to the present time; and if it be true that the executors have the legal seizin of the real estate of the succession, under the will and under the law, in the presence of the heirs instituted by the will, and even in opposition to the wishes of one of those heirs, it is not very clearly seen why such appointment of commissioners and agents should ever be made. The administration of the McDonogh estate would be much simplified; and I, for one, am fully persuaded that the estate would be just as well administered. But is

this the administration contemplated by the will, or by the law, which, in this respect, is but the echo of the will? I think not. As to the order of court, which is claimed as the third title of the executors to the seizin of the real estate of this succession, I have looked through the record of the mortuaria of John McDonogh, and I find that besides the usual orders for letters testamentary and for inventories, there have been several orders granted upon the prayer of the executors, and authorizing them to pay insurances, taxes, and other charges upon the real estate of the succession. I do not consider that those orders have any bearing upon the question of the legality of the appointment of a sequestrator of the real estate of the succession. Every thing that has been done by the executors in the premises has undoubtedly been done for the interest of the estate, and I could not certainly have deemed myself at liberty to refuse them the authorization to perform acts conservatory of the property. Such orders were certainly not viewed by me as committing me upon the point now submitted.

The third ground of this rule is, that it is not true that there is a danger of waste or dilapidation of the property. The allegation of the supplemental petition which this ground of the rule traverses is as follows: "There is great danger, as the said real estate is now situated, that it will be dilapidated, and that the revenues and fruits produced by the property will be lost.

The evidence shows me that certain persons, styling themselves the next of kin and heirs at law of John McDonogh, and all of them residents of other States of the Union, have filed a bill in chancery, in the circuit court of the United States, holding session in this city, in which they aver that the will of John McDonogh, which has been admitted to probate in this court, and under which the movers in this rule have qualified as executors, is inoperative, null, and void, for sundry causes therein set forth in detail. In consequence, the complainants in said bill in chancery pray the circuit court of the United States to decree that they, the complainants, are the sole and exclusive owners of each and every part of the property left by said McDonogh. And as conservatory measures, (as I construed the bill,) pending the suit and prior to the final decree, the action of the said federal court is invoked for the purpose of compelling the testamentary executors to account for all the property belonging to the succession which has or may come into their hands, and for all rents, &c., of the same; and moreover, as a further conservatory measure, the complainants pray that the mayor and councils of New Orleans, the executors of McDonogh, the Society for the relief of destitute Orphan Boys, and all others who may intervene in the suit and claim any interest under the will, may be enjoined and prohibited forever from taking possession or attempting to take possession of any part of the real estate of John McDonogh's succession, either by themselves or through other persons. The bill in chancery concludes by a prayer for general relief.

The attorney general imagines he sees in this bill in chancery a cause to apprehend great waste and dilapidation of the property of this suc-

cession, and consequent injury to the interests of the instituted heirs. Let us analyze the prayer of the bill, and see whether there be reasonable grounds for this apprehension. First. The bill prays for an account to be rendered by the testamentary executors. This prayer, if granted, will transfer the mortuaria of the succession to another tribunal than that in which the will was probated and the executors were qualified. Here is evidently ground to apprehend a conflict of jurisdiction and uncertainty in relation to the accountability of the executors, which, as the very least of its consequences, must inevitably produce an enormous increase in the expenses of the administration of this succession; and a consequent waste of its resources. Again, the bill prays for an injunction to restrain and prohibit all persons and parties from taking possession of any part or portion of the real estate of this succession, and note that this prayer is so framed that it not only embraces the testamentary executors by name, but by necessary intendment the commissioners and agents whom the testator directs the cities of New Orleans and Baltimore to appoint, and to whom he conveys the seizin of his real estate. Suppose such an injunction granted, what would become of the succession? What a scene of waste and dilapidation! The numerous houses and estates of John McDonogh at the mercy of every intervenor and trespasser, until the termination of a chancery suit in the United States courts! The temporary and conservatory possession of the executors abruptly terminated by a mandate of the chancellor, which at the same time prevents and inhibits the permanent administrative possession of the commissioners and agents under the will! Against the occurrence of such a state of things, this writ of sequestration offers the only protection. I can scarcely suppose that the complainants in the federal courts will ask, or that the court will grant, an injunction against the sheriff, the judicial sequestrator nominated by the law of Louisiana, in the performance of a duty imposed upon him by the order of a State court, and which in no way interferes with the action of the federal court. On the contrary, this sequestration comes in aid of the legitimate authority of the federal court in the premises, and preserves the rights of all claimants until the final decision of their claim. The estate of John McDonogh has been opened in this court. It should be administered until handed over to the heirs under authority of this court. The suit brought in this court, and that in the United States court, although tending to widely different conclusions, yet resemble each other in one important feature. The plaintiffs in each deny the right of the cities of New Orleans and Baltimore to the heirship and possession of the estate of John McDonogh. The right of ownership and possession disputed in this court, in the present suit, has become still more complicated and perplexed by the institution of the chancery suit in the federal court. Under these circumstances I may be permitted to ask, what would the executors, the movers in the present rule, gain by succeeding in this motion, and dissolving the writ of sequestration? Their possession of the real estate appertaining to the succession of McDonogh would be not the less ter-

minated by the injunction of the federal court; and in the place of the sheriff they would find themselves superseded by a receiver appointed by the federal court. For the appointment of a receiver would be the necessary legal and necessary consequence of granting such an injunction as the bill in chancery calls for; and the prayer for general relief with which that bill concludes, authorizes the court to adopt the conservatory measure. See Story's Eq. Pleadings, chap. 2d, sect. 40, as to the effect of a prayer for general relief in a bill in chancery; also, Story's Equity Jurisprudence, chap. 21st, sect. 831 to 833, as to appointments of receivers in chancery.

I am unable to perceive the advantage, either to the executors or to the succession, of the substitution of a receiver for a judicial sequestrator.

It would rather seem, from the language of the third ground of this rule, as if the allegation of the danger of waste and dilapidation contained in the supplemental petition had been viewed by the executors as a reflection upon themselves. I am convinced that such was not the intention of the attorney general. The allegation evidently points at circumstances over which the executors have no control. These circumstances may be *resumed* in a few words—the neglect of the corporations of New Orleans and Baltimore to appoint administrators of the real estate under the will, and the anticipated action of the federal court, rendering abortive such appointment of administrators even if made. Such is a fair construction of the allegation of the supplemental petition in this case, in connexion with the argument of the attorney general on the trial of the rule. The high character of the executors of McDonogh's estate is as well known to that officer as it is to this court, and to the whole community in which we live; that character is a sufficient guarantee of the safety of all interests confided to the keeping of those gentlemen.

The fourth ground of the rule has been sufficiently covered by the remarks above made in reference to the three first grounds—judgment, dismissing the rule, and costs.

*Judgment.*

For the reasons this day filed, it is adjudged and decreed, that there be judgment, dismissing the rule taken herein by defendants to set aside the sequestration with costs.

Judgment rendered 4th January, 1851.
" signed 10th January, 1851.
(Signed) A. M. BUCHANAN, *Judge.*

*Exceptions of mayor and commissioners, filed 7th January,* 1851.

THE STATE OF LOUISIANA
vs.
The EXECUTORS of John McDonogh, and others.

To the honorable A. M. Buchanan, judge of the fifth district court of New Orleans.

The Mayor, Aldermen, and Inhabitants of the city of New Orleans,

a corporation established by law, now comes into court, by their counsel, and for exceptions to the suit instituted in the name of the State of Louisiana, says—

1st. That the attorney general and the other counsel by whom this suit has been instituted, have no authority to bring said suit in the name of the State of Louisiana; that such an action cannot be instituted without especial law directing the institution of the same, and accepting the pretended legacy.

2d. That even if the said action has been properly instituted in the name of the State of Louisiana, still, from the facts and allegations set forth in said petition, it clearly appears that the State of Louisiana has no cause of action.

Wherefore, this respondent respectfully prays that these, its exceptions, may be sustained, and that the suit be dismissed, with costs; and that these respondents be dispensed from answering to the merits; and, as in duty bound, &c., &c.

(Signed) RANDELL HUNT,
" C. ROSELIUS,
" For A. GRAILHE, R. P.,
" ROBERT PREAUX,
*Atto's for defts.*

(Signed) A. GRAILHE, *of counsel.*

*Answer, &c., filed* 11*th January*, 1851.

THE STATE OF LOUISIANA
vs.
EXECUTORS of John McDonogh and others.

The 5th district court of New Orleans.

The Mayor, Aldermen, and Inhabitants of the city of New Orleans, a corporation established by law, now comes again into court, by its attorneys, and reserving to itself the benefit of the exceptions heretofore filed, and in case the said exceptions should be overruled by the court, then, and in that case only, for answer to the petition of the plaintiff, it says: That it denies all and singular the allegations therein contained, so far as they have any tendency to give said plaintiff any cause of action; wherefore, this respondent respectfully prays for judgment in its favor, and for all such other and further aid, relief, and remedy, as the nature of the case may require, and the law will permit; and, as in duty bound, &c., &c.

(Signed) ROBERT PREAUX,
A. GRAILHE,
R. HUNT, and
C. ROSELIUS.

Fifth district court of New Orleans.

I certify the foregoing petition, supplemental petition, orders, exceptions, and answers, judgment on rule, exception and answer of the

mayor, &c., to be true copies from the originals, of record in my office in the above entitled case.

[L. S.] Clerk's office, 2d April, 1851.

P. LE BLANC, *Clerk.*

Endorsed as follows:

No. 1981, Mary Murdoch and als. vs. Executors of McDonogh. Copy of record in the case of State of Louisiana vs. the Executors of McDonogh, from the 5th district court, New Orleans. Filed 9th April, 1851, with plea of J. L. Lewis. J. W. GURLEY, *Clerk.*

And afterwards, to wit, on the 28th day of April, A. D. 1851, the following entry w as made in the minutes:

MARY MURDOCK et als., heirs, &c.,
vs.
EXECUTORS of John McDonough and others. } 1981.

On motion of W. C. Micou, esq., it was ordered that the commissions herein returned, and filed on the 3d April instant, be opened, and the same was accordingly opened in open court.

And on the 27th May, 1851, this cause was continued, and the following entry thereof made in the minutes:

MARY MURDOCK et als., heirs, &c.,
vs.
THE EXECUTORS of McDonough. } 1981.

On motion of W. C. Micou, esq., it is ordered that this case be continued until Monday next.

And on the 2d June, 1851, the following entry was made in the minutes:

MARY MURDOCK et als., heirs, &c.,
vs.
EXECUTORS of John McDonough et als. } 1981.

This cause having been assigned for this day, and the parties not being present, the same was continued indefinitely.

*Consent filed Nov. 3th,* 1851.

MARY MURDOCK et als.
vs.
EXECUTORS of McDonough et als. }

It is agreed that all the depositions de bene esse in this case be opened by the clerk, with leave for either party to have access to the same.

New Orleans, Oct'r 31, 1851.

LEVI PEIRCE, *Attorney,*
BENJAMIN & MICOU,
*For plaintiff.*

Endorsed—"1981." Filed Nov. 4th, A. D. 1851.

J. W. GURLEY, *Clerk,*
By W. CORNELIUS,
*Deputy Clerk.*

And afterwards, to wit, on the 8th day of March, 1852, an entry was made in the minutes, in the words and figures following, to wit:

MARY MURDOCK and als.
vs.
EX'RS of John McDonough. } 1981.

By consent of parties, it is ordered that this cause be continued until Monday, the 5th of April next.

*Agreement.*

MARY MURDOCH et al., heirs at law, &c.,
vs.
C. ROSELIUS et al., ex'rs of McDonogh. } U. S. C. Ct. In equity.

Agreement for the trial of this case.

1st. The answer of the defendants is agreed to apply to the supplemental as well as the original bill; every other formality required by chancery practice not complied with is waived on both sides, and it is agreed that the cause is fully at issue on the pleadings, and ready for final hearing on the pleadings and proofs.

2d. The testimony of complainants is agreed to be the following: The depositions of witnesses, and exhibits annexed on file, and opened by consent of parties in proof of heirship. The copy of the register of births from the family Bible certified by the clerk of the executors; the will of McDonough with instructious annexed, the printed copies to be used in both courts; the inventory of the estate of deceased passed before Mazureau & Layton; the certified copy of the account filed by the executors in the 5th district court, and the petition accompanying.

3d. In case of appeal by either party, it is agreed that the printed copy of the will and instructions, and the notarial copy of the inventory, be sent up by the clerk without being recopied; and it is further agreed that the inventory need not be printed at Washington, the printing thereof being deemed by both parties unnecessary.

4th. The defendants are at liberty to present any other part of the mortuaria of the deceased, or any other record or document authenticated according to the laws of Louisiana, which they may deem material to the defence, provided that on the opening of the cause the complainants be notified what documents, &c., the defendants intend to produce.

C. ROSELIUS,
ROBERT PREAUX,
BENJAMIN & MICOU,
*For complainants.*
A. GRAILHE.

Endorsed—"1981." Filed 16th March, 1852.
J. W. GURLEY, *Clerk.*

And afterwards, to wit, on the 12th day of April, 1852, the following entry was made on the minutes:

1851.

MARY MURDOCK and als., heirs, &c., vs. EXECUTORS of McDonough and als. } 1981.

On motion of Robert Mott, esqr., solicitor for complainants, it is ordered that this cause be set for trial for to-morrow morning, and that the solicitors of record be notified thereof.

And afterwards, to wit, on the 13th of April, 1852, the following entry was made in the minutes:

MARY MURDOCK and als., heirs, &c., vs. EXECUTORS of McDonough and als. } 1981.

This cause having been assigned for this day, was called up for trial; when, on motion of Messrs. Benjamin & Micou, and Mott & Frazer, solicitors for complainant, and no objection being made by the solicitors for the defendants, it was ordered that the said complainants have leave to discontinue as against Jno. L. Lewis, one of the defendants, made party in the supplemental bill, filled by complainants on the 17th March, 1851. And it is further ordered that the said Jno. L. Lewis be hence dismissed with his costs, to be taxed and charged to said complainants.

And afterwards, to wit, on the 13th April, A. D. 1852, the following entry was made in the minutes:

MARY MURDOCK and als., heirs, &c., vs. EXECUTORS OF McDONOUGH and als. } 1981.

This cause was opened and proceeded with until one o'clock, p. m.; whereupon, the parties having closed their evidence, it was ordered that the cause be continued for further proceedings until to-morrow at 10 o'clock, a. m.

And afterwards, to wit, on the 14th April, A. D. 1852, the following entry was made in the minutes:

MARY MURDOCK and als., heirs, &c., vs. EXECUTORS OF McDONOUGH et als. } 1981.

The argument in this cause was opened by W. C. Micou, esq., on part of complainants, and proceeded in until two o'clock; whereupon, he having closed, it was ordered that this cause be continued until to-morrow morning at 10 o'clock.

And on the 15th April, A. D. 1852, the following entry was made in the minutes:

MARY MURDOCK and als., heirs, &c., vs. EXECUTORS OF McDONOUGH and als. } 1981.

The argument of this cause was resumed, on part of complainants,

by J. P. Benjamin, esq., who, having closed his argument, at 2 o'clock, p. m., it was ordered that the cause be continued until to-morrow at 10 o'clock, a. m.

And on the 16th April, 1852, further proceedings in this cause were entered in the minutes, as follows:

MARY MURDOCK et als., heirs, &c.,
vs.
EXECUTORS OF MCDONOUGH and als. } 1981.

This cause was resumed and argued by A. Grailhe, esq., on part of the City of New Orleans, one of the defendants, and proceeded with until 2 c'clock, p. m., whereupon it was ordered that this cause be continued until Monday at 10 o'clock, a. m.

And afterwards, to wit, on Monday, the 19th day of April, 1852, the following entry was made in the minutes:

MARY MURDOCK et als., heirs, &c.,
vs.
EXECUTORS OF MCDONOUGH and als. } 1981.

Mr. Grailhe, of counsel for the defendant, the City of New Orleans, this day resumed his argument, and proceeded therewith until 2 o'clock, p. m.; whereupon, it was ordered that this cause be continued until to-morrow morning at 10 o'clock.

*Stipulation filed 20th April*, 1852.

MARY MURDOCK et al., heirs of McDonough,
vs.
THE EXECUTORS OF MCDONOUGH et al.

Circuit court, United States, district of east Louisiana.

It is hereby stipulated, that the answer of the Society for the relief of destitute Orphan Boys, this day filed, shall be deemed and taken to have been filed on the rule day in chancery first after the service of the subpœna herein on said defendant; that the replication shall, in like manner, be taken to have been filed immediately thereafter. It is agreed that the printed copies of the act of incorporation, and the act to prolong the same, filed with the answer of said defendant, are true and correct copies of the originals, and no further proof thereof shall be required. Said copies are to be taken as duly proved and offered in evidence. It is also admitted as fully proved that the late Beverly Chew was the president of the said corporation at the time mentioned in the will of John McDonough. It is also admitted that Greer B. Duncan is now the acting president of the board of directors of the said "Society for the relief of destitute Orphan Boys;" that the answer filed has been duly authorized by said corporation, and is to be taken, to all intents and purposes, as put in under oath at the time aforesaid.

It is also agreed that the answers to the interrogatories made on behalf of said society by G. B. Duncan, are to be taken as the answers of said corporation, and as having been duly sworn to.

New Orleans, April 19th, 1852.

BENJAMIN & MICOU,
*Solicitors for complainants.*

*Separate answer of the Society for the relief of destitute Orphan Boys. Filed 20th April,* 1852.

Circuit court of the United States, in and for the fifth circuit and eastern district of Louisiana.

MARY MURDOCH et al., heirs of John McDonough,
vs.
THE EXECUTORS OF MCDONOUGH.

Separate answer to the bill of complaint made by the Society for the relief of destitute Orphan Boys.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantages of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainants' said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant answering saith:

That it believes it to be true that John McDonough, in said bill mentioned, hath departed this life, and did so at the time stated by complainants in their said bill. This defendant also admits, that previous to the death of the said John McDonough as aforesaid, he did make an olographic will and testament, which has been duly admitted to probate in the fifth district court of New Orleans, and that said deceased, in and by his said will, did appoint executors, as charged in said bill of complaint, and that they have entered upon the duties thus conferred upon them. This defendant, furthermore answering, saith, that it is believed that the exhibit marked A, annexed to and made part of complainants' bill of complaint, is a true copy of the will of said deceased, except as to the "memoranda and instructions of said testator," referred to in said bill of complaint, to which this defendant is an utter stranger, to all and every such matter. And for further answer for itself, this defendant, answering, saith, and as matter of defence in this behalf, to so much of said complainants' said bill of complaint as seeks to set aside and have decreed null and void all that part and portion of the will of said John McDonough as gives and bequeaths a legacy to this defendant, as in said will will more fully and at large appear, this defendant propounds, avers, sets forth, and specially pleads, that in the year of our Lord eighteen hundred and twenty-five, the legislature of the State of Louisiana passed an act of incorporation, whereby

was created, by the corporate name and style of the "Society for the relief of destitute Orphan Boys," a corporation with perpetual succession, with full rights and capacities of taking and receiving, purchasing, possessing, and enjoying all kinds of property, real and personal, by gift, grant, sale, exchange, bequest, or by any other mode of conveyance or transfer whatever, and the same to grant, sell, convey, or dispose of, and also to sue and be sued, plead and be impleaded, in all courts, which said act was approved and signed by the then Governor of the State on the 4th day of February, A. D. 1825; that said act was, by its own terms, to continue and be in force during the space of twelve years; that afterwards, to wit, in the year 1837, the legislature of the State of Louisiana passed another act entitled an act to extend, prolong, and amend an act entitled an act to incorporate the Society for the relief of destitute Orphan Boys, approved on the 4th of February, eighteen hundred and twenty-five, whereby the first act of incorporation as aforesaid was extended and prolonged for the full term of fifty years, in all its parts, except as in said last act expressed; which said last act, so by said legislature enacted, was approved and signed by the Governor on the third day of February, A. D. 1837; which two acts this defendant annexes hereto, as part of this answer, as exhibit No. 1, in pamphlet form and edition, averring them to be copies of the original and official copies, of which this defendant reserves the right of hereafter presenting, if need be. The defendant refers to the whole of the said two acts as parts of this answer. And for further answer, the defendant saith, that at the time when said John McDonough made his aforesaid will, at the time of his death, at the time of the probate of said will, ever since, and now, this defendant was and is a body politic and corporate in law, with full and ample authority to receive by gift, grant, and bequest, and especially was and is this defendant in all respects fully competent in law to accept the benefit and advantage tendered to and for it, in and by the last will and testament of said John McDonough, in manner and form as it is in said will proposed, ordered, and bequeathed.

And this defendant, for further and other separate answer for itself in this behalf saith, that in and by the last will and testament of said John McDonough, so as aforesaid by him made and published, and *so as aforesaid by him made and published, and* so as aforesaid duly probated, it is provided and the said will in one part thereof, and referring to and intending to provide for this defendant, reads in substance as follows, to wit: "Thirdly, I give and bequeath to the Society for the relief of destitute Orphan boys" of the city of New Orleans, in the State of Louisiana, (of which institution Beverly Chew was president on the 28th day of April last, 1838,) for the express and sole purpose (and no other) of being invested in the purchase of real estate, say, lots of ground and houses, and lots of ground, situated in the city of New Orleans and its suburbs, from which a perpetual revenue from the rents of said real estate may be drawn for the support of said institution, an annuity of the one-eighth part, or twelve and a half per cent., of

the nett yearly revenue of rents of the whole of the general estate as herein before willed and bequeathed to the Mayor, Aldermen, and Inhabitants of the cities of New Orleans in the State of Louisiana, and Baltimore, in the State of Maryland; which annuity of the one-eighth part of the nett revenue of rents as above stated, shall be set apart yearly or half yearly, by the commissioners and agents of the general estate, (to be appointed as hereinafter set forth,) and deposited in some one or more of the banks in the city of New Orleans (which pay an interest on money deposited with them,) until such time as said annuity shall amount to the sum of four hundred thousand dollars, (exclusive of any interest which may have accrued on it,) when it shall cease and be no longer paid." And which said bequest this defendant avers is in all respects in strict conformity to the laws of the land, is obnoxious to no public policy, and in no manner void or voidable for any of the causes set forth and relied upon by said complainants in their said bill of complaint. And said defendant further answering saith, that it is, and always has been, ready to receive and accept said bequest in manner and form as it is in said will provided it shall be paid, or in any other lawful manner whatsoever; and that it is ready to take the same subject to every lawful condition upon which it has been bequeathed as stated in said will. And this defendant, by protestation, &c., &c., and under the rules adopted by the Supreme Court of the United States for courts of equity of the United States, and promulgated at the January term of said court, in the year of our Lord one thousand eight hundred and forty-two, and claiming the same benefit of said rules as if the same had been specially pleaded, saith, that not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, except as the same have been or may be herein admitted, doth demur in law to said bill, and for cause of demurrer showeth, that the said complainants hath not by said bill made such a case as entitles them in a court of equity to the relief which they ask, as against this defendant, touching the matters contained in said bill or any such matters. And this defendant for further answer by way of demurrer, and for further defence herein and cause of demurrer, this defendant shows, that it doth appear by the complainants' own showing in said bill, that the States of Maryland and Louisiana, the City of Baltimore, in the State of Maryland, the American Colonization Society, and various individuals in the will of said John McDonough, named as the executors of said will, are necessary parties to this bill of complaint, inasmuch as the said parties respectively are shown to have a direct interest in maintaining the validity of said will, in whole or in part; but yet the said complainants have not made the said States of Maryland and Louisiana, the City of Baltimore, the American Colonization Society, or the individuals names, parties to said bill. Wherefore the said defendant prays the judgment of this honorable court, whether it shall be compelled to make any further or other answer to said bill. And this defendant saith, that without this, that there is any

other matter, cause, or thing in said complainants' said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant; except in so far as said complainants set forth that they are heirs at law of the late John McDonough; which said allegations this defendant doth not admit, as it hath no knowledge upon that subject, and submits to the court that the said complainants shall produce full proof of all such and such like allegations. This defendant humbly prays to be hence dismissed with all reasonable costs and charges in this behalf most wrongfully sustained. G. B. DUNCAN,

*Solicitor for said defendant.*

*Answer of the "Society for the relief of destitute Orphan Boys" to the interrogatories annexed to the complainants' bill of complaint; and, first, as to those specially propounded to this defendant.*

To the interrogatory numbered ten said respondent answering saith: Yes; it does claim some right, title, and interest, and some payments of money out of the succession of John McDonogh, deceased; it claims the sum of four hundred thousand dollars, to be paid by the said succession, its executors, administrators, commissioners, heirs, or whatsoever other name they are or may be hereafter called.

To the interrogatory numbered twelve this respondent saith: That as in said interrogatory requested, it now proceeds to answer the interrogatory number one, and interrogatory number five, of those propounded to the executors; and 1st as to No. 1, it is answered as follows: That it is believed that the paper marked exhibit A is a true copy of the will of John McDonogh; except in so far as it may be inferred from the language of the bill and interrogatory that it is intended to aver and inquire of this defendant, whether the "certain memoranda and instructions of said testator," that the same are a part of the last will and testament of John McDonogh; if such is the purpose, intent, and meaning of said interrogatory, then this respondent answering saith, that it does not admit that said parts of said exhibit A formed parts of said will of John McDonogh, deceased. It is admitted that said parts of said exhibit A, as purports to be the will of John McDonogh, has been admitted to probate in the fifth district court of New Orleans.

2d. As to the fifth interrogatory this respondent saith: That it cannot aver or deny that the complainants named in the bill of complaint are or not the heirs of John McDonogh, or whether their relationship is properly set forth in this said bill of complaint; this respondent having no knowledge or information whatever on that subject.

The foregoing answers are made by the undersigned in his capacity of president of the board of directors of the Society for the relief of destitute Orphan Boys. G. B. DUNCAN, *President.*

Endorsed, "1981, U. S. circuit court, filed 20th April, 1852."

J. W. GURLEY, *Clerk.*

*Charter, and amendments thereto, of the "Society for the relief of destitute Orphan Boys," annexed to and made part of the foregoing answer.*

An act to incorporate the Society for the relief of destitute Orphan Boys.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in general assembly convened, That James Workman, Beverly Chew, Jean Baptiste Labatat, Rene Lemonier, A. Perlee, William Christy, John Nicholson, Peter Laidlaw, and George W. Morgan, chosen directors of the Society for the relief of destitute Orphan Boys, and all others who are or may hereafter become members of that association, be, and they are hereby, incorporated under the name and style of the "Society for the relief of destitute Orphan Boys;" and under that name shall have perpetual succession, and shall be capable, at all times hereafter, of taking, receiving, purchasing, and possessing. and enjoying all kinds of property whatever, real or personal, by gift, grant, sale, exchange, bequest, or by any other mode of conveyance or transfer whatsoever; and the same to grant, sell, convey, or dispose of, and also to sue and be sued, plead and be impleaded, in all courts, and elsewhere, and to have a common seal, and the same to alter, break, and renew at their pleasure.

Section 2. And be it further enacted, That the said society shall be bound to conform in all respects to the constitution now established by them. The articles are as follows, to wit:

*Article first.*

For the purpose of establishing an asylum for the support and instruction of male orphans in the city of New Orleans, a society shall be formed, to be called "the Society for the relief of destitute Orphan Boys."

*Article second.*

The said society shall be composed of all those who shall contribute for the establishment or support of said asylum, to wit:

First. Those who contribute eight dollars annually shall be entitled to one vote; those who contribute twenty dollars annually, to two votes; those who contribute fifty dollars annually, to three votes; those who contribute one hundred dollars annually, to four votes; and those who contribute two hundred dollars or upwards, annually, shall be entitled to five votes each.

Second. Those who contribute the sum of one hundred dollars at once shall be members for life, with one vote ; those who contribute two hundred dollars at once shall be members for life, with two votes ; those who contribute five hundred [dollars] at once shall be members for life, with three votes ; those who contribute one thousand dollars at once shall be members for life, with four votes ; and those who con-

tribute two thousand dollars, or upwards, at once shall be members for life, with five votes each.

Third. Members for life, who shall also contribute annually, shall be entitled to vote for both contributions, according to the amount thereof, as above specified.

Fourth. Where any corporate body shall contribute such a sum as would entitle an individual to become a member for life, that corporation shall be considered as a member, and entitled to vote, according to the amount of its contribution, for and during the whole term of its legal existence.

Fifth. And when any corporation shall contribute annually to the support of this institution, that corporation may have the privilege of placing in the said asylum such a number of orphan boys, proportioned to the amount of the said contribution, as may be agreed upon by the directors of the institution and those who shall represent or be authorized to stipulate for the said corporation for that purpose.

*Article third.*

The said annual contributions shall be payable half-yearly, in advance; and the contributions of the members for life shall be paid, when required by the directors, to the treasurer of the society.

*Article fourth.*

Governor Robertson, Joseph Roffignac, the reverend Father Antonio De Sedella, the reverend Mr. Hull, the reverend Dr. Gallaher, General Labatut, Zenon Cavalier, Richard Relf, and Peter Laidlaw, esquires, shall be requested to officiate as commissioners for taking subscriptions for this institution; and as soon as the sum of three thousand dollars shall have been subscribed, to be paid at once, as aforesaid, the members of the society shall be assembled at such time and place as the said commissioners, or a majority of them, shall fix and make known by advertisements in two of the newspapers published in the said city, in the English and French languages, at least one week previous to the day of the proposed meeting; and the said members shall then and there choose, by plurality of votes, agreeably to the provisions of the preceding article, and by ballot, nine of their own number to be directors of the said institution. Should any vacancy happen by death, resignation, or refusal to act, of any of the said commissioners, the remaining commissioners shall fill up such vacancy at their next meeting.

*Article fifth.*

The office of the said first directors shall terminate on *on* the third Monday of April, 1825; and on the first Monday in the same month, in the said year, and in every year thereafter, there shall be a general meeting of the members of the said society, at some convenient place to be fixed and made known in the manner prescribed in the preceding

articles by the directors for the time being; and nine directors, to serve during the ensuing year, shall be then and there elected by ballot, and by plurality of the votes of such members as shall so meet: Provided, that no member shall be entitled to vote who shall not have paid up his contribution, as is provided for by the third article.

*Article sixth.*

The directors of the said institution shall, at their first meeting, appoint one of their number to be their president, and he shall continue in office during one year, or until the next annual election of the directors. In case of the death or resignation of the president for the time being, the directors of the said institution shall, at their next meeting, appoint another president to serve till the expiration of the time during which his predecessor was entitled to serve; and whenever a vacancy shall happen by the death or resignation of any of the said directors, the remaining directors shall, at their next meeting, fill up such vacancy by electing, by ballot, another member or members of the society to serve in the place of the director, who shall have so died or resigned. Two directors and the president, who, in case of absence, may be replaced for the occasion by a director named among themselves, shall form a quorum for transacting business.

*Article seventh.*

The said directors shall, without delay, take such measures as they may deem most expedient for providing suitable grounds and buildings for the said asylum. They shall have power to appoint, and at their pleasure to displace, a secretary, a treasurer, and all such masters, assistants, and servants as may be necessary, and to allow to each of them a reasonable salary or compensation; to administer the funds of the institution; to convene a general meeting of the members of the society, at such convenient time and place as the said directors shall appoint and notify by public advertisements, pursuant to the provisions of the fourth article; and to make all needful rules and regulations for the comfortable and economical maintenance, the religious, moral, and literary instruction, the good government and discipline, and the healthful employment of those for whose relief this establishment is designed; for placing them in due time as clerks or assistants in merchants' stores, binding them as apprentices to learn suitable arts, trades, or occupations; or otherwise disposing of them advantageously for themselves and the community, in the best manner which circumstances will permit; and generally for carrying into effect, as extensively as possible, the beneficent purposes of this institution.

*Article eighth.*

Amendments to this constitution may be proposed at any time by the board of directors, and shall be valid when ratified at a general meeting of the society by a majority of the votes of the members present.

And that all the rules and regulations contained in the said constitution, and all those which shall be made in pursuance thereof, and conformably thereto, by the directors of the said society, shall have full legal force and validity: Provided, that such rules and regulations be not repugnant to the constitution or to any law of this State or of the United States; and that it shall not be lawful for the said corporation to apply their revenues for any other purposes but those specified in the said constitution, or to do or transact any business, save what appertains to a charitable society, according to the true intent and meaning of this act.

Section 3. And be it further enacted, That the treasurer of the State be, and he is hereby, authorized to pay out of the funds in the treasury, not otherwise appropriated, a sum of two thousand dollars, for the present year 1825, on the warrant of the Governor, to be presented to the president and directors of the society incorporated by the present act, as a donation on the part of the State of Louisiana to that institution.

Section 4th. And be it further enacted, That this act shall be in force during the space of twelve years.

Approved February 4, 1825.

*Extension and amendments.*

An act to extend, prolong, and amend an act entitled "An act to incorporate the Society for the relief of destitute Orphan Boys," approved on the fourth of February, eighteen hundred and twenty-five.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in general assembly convened, That "An act entitled an act to incorporate the Society for the relief of destitute Orphan Boys," approved on the fourth of February, eighteen hundred and twenty-five, and which will expire by its own limitation on the fourth of February, eighteen hundred and thirty-seven, be, and the same is hereby, extended and prolonged for the full term of fifty years, in all of its parts, except as the same is by this act amended.

Section 2. Be it further enacted, &c., That said society shall hereafter be composed of such persons as shall pay to the treasurer the annual sum of ten dollars; and every person paying the sum of fifty dollars at any one time, shall be a life member; and every person who shall have paid the annual subscription aforesaid during the term of ten successive years shall also be a life member.

Section 3. Be it further enacted, &c., That after the first annual election for directors under this act, no person shall be entitled to vote for directors, except such as are life members: Provided, however, that every incorporated institution, which shall subscribe the sum of one hundred dollars, or which now is, or hereafter may be, taxed by the legislature for the benefit of this institution, shall be considered as a member entitled to one vote.

Section 4. Be it further enacted, &c., That Beverly Chew, John Nicholson, Lucius C. Duncan, James P. Freret, Charles Briggs, Thomas Barrett, George W. Morgan, and Greer B. Duncan, shall act as directors of said society until the election of the board of directors under this act, any three of whom shall compose a quorum for the transaction of any business of the institution.

Section 5. Be it further enacted, &c., That on the first Monday of January, eighteen hundred and thirty-eight, and on the same day of the year, during the continuance of this charter, there shall be a general meeting of the members of said society, at such convenient place, to be fixed by the directors for the time being, or a quorum of them, to be made known by advertisement in two newspapers of New Orleans, in the French and English languages; and eight persons shall then be elected by ballot, and by a plurality of votes, to serve as directors for the ensuing year: Provided, that, if hereafter, from any cause whatever, an election should not take place agreeably to the provisions of this act, then the directors for the time being shall serve until their successors are chosen; and if any person elected under this act should refuse to serve, or should neglect to attend four successive meetings of the board, or if a vacancy should happen by resignation or death, then the directors for the time, being a quorum, shall be authorized to fill such vacancy.

Section 6. Be it further enacted, &c., That paternal authority is hereby given to the said directors over the persons for whose benefit this institution is established, and this, as a corporation, they shall continue to enjoy over the boys until the age of majority.

Section 7. Be it further enacted, &c., That said directors shall be empowered to receive into said institution any destitute boy, whether the same be an orphan or not, whenever, in their judgment, humanity demands it; and in such cases they shall have the same powers over such inmates as they have over the orphans.

Section 8. And be it further enacted, &c., That this charter be in full force and effect from the day it shall be approved by the Governor.

Approved February 3, 1837.

Endorsed—"1981, U. S. circuit court; filed April 27th, 1852."

J. W. GURLEY, *Cl'k*,
By W. CORNELIUS, *D. C.*

And on the 20th day of April, 1852, the following entry was made of record in the minutes:

MARY MURDOCK and als., heirs, &c.,
vs.
EXECUTORS OF MCDONOUGH and als. } 1981.

Mr. Grailile resumed his argument on behalf of the city of New Orleans, and proceeded therewith until one o'clock, p. m. Whereupon it was ordered that the cause be continued until to-morrow at 10 o'clock, a. m.

And on the 21st day of April, 1852, the following entry was made of record in the minutes:

MARY MURDOCK and als., heirs, &c.,
vs.
EXECUTORS OF McDONOUGH and als. } 1981.

Mr. Graihle resumed his argument on part of the city of New Orleans, and proceeded therewith until two o'clock, p. m. Whereupon it was ordered that this cause be continued until to-morrow at 10 o'clock, a. m.

*Stipulation, filed April* 21, 1852.

MARY MURDOCK and al.
vs.
C. ROSELIUS and al., executors.

United States circuit court. In chancery.

Whereas the city of New Orleans has been consolidated by an act of the legislature of the State of Louisiana, since the institution of this suit, into one municipal corporation, called the city of New Orleans, and the rights, credits, and property of every nature and kind, formerly belonging to the mayor, aldermen, and inhabitants of the city of New Orleans, and to the several municipalities thereof, have been, by virtue of said law, transferred to the said city of New Orleans thus consolidated; it is agreed between the solicitors of the complainants and said city of New Orleans, that the answers filed by said Mayor, Aldermen, and Inhabitants of New Orleans, shall be considered as now filed by the City of New Orleans, consolidated as aforesaid; the City of New Orleans now making itself, by virtue of this agreement, party defendant in this cause as it now stands, in the place and stead of the Mayor, Aldermen, and Inhabitants of the city of New Orleans, to whose rights in this cause the City of New Orleans has succeeded; and that this cause be tried upon the bill, and answers, and evidence, as it now stands, waiving all irregularities of pleading in relation to the change of the party defendant as aforesaid, and any decree rendered in this cause shall be binding on both parties.

JNO. R. GRYMES,
And BENJAMIN & MICOU,
*Solicitors for compl'ts.*

RANDELL HUNT,
ROBERT PREAUX,
*Solicitors for the City of New Orleans.*

C. ROSELIUS,
A. GRAILHE.

Endorsed: 1981. U. S. circuit court. Filed 21st April, 1852.
J. W. GURLEY, *Clerk.*

1837.

And on the 22d day of April, A. D. 1852, the following entry was made on the minutes:

MARY MURDOCK and als., heirs, &c.,
vs.
EXECUTORS OF McDONOUGH and als. } 1981.

Mr. Grailhe resumed, and proceeded until 2 o'clock, p. m., when, having concluded his argument, it was ordered that this cause be continued until to-morrow at 10 o'clock, a. m.

And on the 23d day of April, A. D. 1852, the following entry was made on the minutes:

MARY MURDOCK and als., heirs, &c.,
vs.
EXECUTORS OF McDONOUGH and als. } 1981.

The argument in this cause was resumed, on part of the City of New Orleans, by Robert Preaux, esq.; Greer B. Duncan, esq., solicitor for the Society for the relief of destitute Orphan Boys, defendant herein, addressed the court on part of the said defendant, and, having concluded his argument at 3 o'clock, p. m., it was ordered that this cause be continued until Monday next at 10 o'clock, a. m.

And on Monday the 26th day of April, A. D. 1852, the following entry was made on the minutes:

MARY MURDOCK and als., heirs, &c.,
vs.
EXECUTORS OF McDONOUGH et als. } 1981.

This cause, as continued from Tuesday last, was resumed and argued by Thomas Allen Clarke on behalf of the American Colonization Society; and, he having closed his argument, it was ordered, that this cause be continued until to-morrow morning at 10 o'clock.

And on the 27th day of April, A. D. 1852, the following entry was made in the minutes:

MARY MURDOCK and als., heirs, &c.,
vs.
EXECUTORS OF McDONOUGH et als. } 1981.

This cause, as continued from yesterday, was called up, when, in consequence of the indisposition of Randell Hunt, esq., of counsel for defendants, who was expected to address the court on behalf of the City of New Orleans, it was ordered, that this cause be continued until to-morrow at 10 o'clock, a. m.

And on the 28th day of April, A. D. 1852, the following entry was made on the minutes:

MARY MURDOCK and als., heirs, &c.,
vs.
EXECUTORS of McDonogh and als. } 1981.

Mr. Hunt being still indisposed, the argument of the cause, on part of the defendants, was closed by Christian Roselius, esq.; whereupon it was ordered that this cause be continued until to-morrow, at ten o'clock, a. m.

*Testimony.*

MARY MURDOCK and als.
vs.
EXECUTORS of McDonogh. } 1981.

Memorandum of evidence offered on trial of cause, 13th April, 1852, and 14th April, 1852.

*Complainants' evidence.*

1. A. Depositions of John Cole, P. E. Thomas, and two letters annexed.
2. B. Depositions of Maria S. Johnson, John Glenn, Geo. Switzer, and Ann Stanley.
3. C. Letters of guardianship.
4. D. Copy of registry of births, from family Bible.
5. E. Will and memoranda.
6. F. Inventory of the estate, passed before Mazareau and Layton.
7. G. Copy of executors' account, and petition.
8. H. Extract from message of Gov. Lowe, of Maryland, in relation to McDonogh estate, and letter of Johnson, attorney general of Louisiana, on the same subject, to the Governor of Louisiana, both in print.

Attest: J. W. GURLEY, *Clerk.*

*Depositions marked A.*

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

Be it remembered, that, on this 26th day of March, in the year of our Lord one thousand eight hundred and fifty-one, at the city of Baltimore, in the district aforesaid, before me, John Carrere, a commissioner, appointed by the circuit court of the United States for the fourth circuit, in and for the district of Maryland, pursuant to the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," personally appeared John Cole, a witness for the complainants in a certain civil cause now depending in the circuit court of the United States, for the fifth circuit, in and for the eastern district of Louisiana, in equity sitting, wherein Mary Murdock, together with her husband William F. Murdock, Ann Cole, and others, are complainants, and C. Roselius, W. E. Leverich, F. B. D'Aquin, A. D. Crossman, executors of the

will of John McDonogh, the Mayor and Councils of the city of New Orleans, and others, are defendants.

And the said witness being by me first carefully examined, and cautioned, and sworn, to testify the whole truth, makes oath, deposeth, and saith, as follows:

I reside in the city of Baltimore, and am in my seventy-seventh year. At present I am engaged in no business. I have resided in the city of Baltimore between sixty-five and sixty-six years. I knew the late John McDonogh of New Orleans, and knew him very well; I married his sister Mary, who died before him, and in December, eighteen hundred and forty-five. The said John McDonogh had brothers and sisters, and he had also half-sisters. The following are the names of his brothers and sisters of the full blood—Joseph, Thomas, Henry, James, and William, five in number; Elizabeth, Jane, Mary, and Margaret, four in number; there were two other sisters who came, I think, immediately after Elizabeth, and who both died in infancy. Said John McDonogh had three sisters of the half-blood, one only whom I knew, her name was Sarah. Elizabeth is dead; she was married to James Pogue, who is also dead; they had children, all of whom are dead. Said Elizabeth had grandchildren, viz., Laura J. Welsh, and her three brothers, whose names, as I have understood, are Thomas Welsh, Frank E. Welsh, and William P. Welsh. I have understood that Thomas, Frank, and William, are minors; Laura, I know, is of full age. The mother of the four Welsh's was Maria Pogue, daughter of Elizabeth above named. The only other grandchild of Elizabeth is Mrs. Ord, whose christian name I have understood is Maria Louisa, and is the wife of Pacificus Ord, as I have also understood.

Jane, the next sister of John McDonogh, is dead; she was married twice, and both of her husbands are dead. She had a child by her first husband, whose name was Young; said child *said child* is dead, without issue. By her second husband, Jesse Hammett, she had several children; the names of the sons were Robert H., Jesse, and John Hammett; there were five daughters, and I have understood that the names of said daughters were Margaret, Jane, who married William Beaver, Sarah, who married Jacob Beaver, Eliza, who married Joseph C. Anderson, [and] Ann Maria, who married Peter Snook; of the said sons John is dead, leaving no issue; of the daughters Margaret was married twice, and is dead, leaving two children by each marriage, whose names, as I have understood, are, John Dibb and William Dibb, who were the children of the first marriage, and Margaret Pascault and Jane, the children of the second marriage; which Jane is the wife of William T. Dowling, as I have understood.

The third sister, Mary, was my wife; she is dead, and has left children and grandchildren. Her children are as follows: Ann Cole, Mary, the wife of William F. Murdock, Eliza Hayne, the wife of Geo. Hayne, George F. Cole, Louisa, the wife of Hugh W. Sheffey; these are all of her children now living. She had a daughter, Margaret Jane, who married George F. Jenkins, and is dead, leaving the following minor children, George, Mary, and Conway, three in number.

The fourth sister, Margaret McDonogh, is dead; she married Lemuel Ludden, by whom she had one daughter, Rosalba, wife of Dr. Lynch, whose christian name I have understood is Andrew A. Lynch.

Joseph McDonogh, brother of John, is dead. He was married and left one child, Mrs. Day, whose christian name I have understood is Sarah; her husband's name was Nicholas Day; both of them are living.

Thomas, the second brother of said John McDonogh, is dead, without issue; as is also Henry, the third brother of said John McDonogh. James McDonogh, the next brother, is dead also, without issue; and William, the youngest brother of said John McDonogh, is also dead without issue.

The above mentioned brothers and sisters of the full blood of said John McDonogh were the children of his father, John McDonogh, and his mother, Elizabeth McDonogh, who resided in the city of Baltimore many years, and died there, having lived during the whole time in said city as man and wife, and recognised constantly the above named brothers and sisters of John McDonogh, together with himself, as their lawful children. The said John McDonogh, lately deceased in the city of New Orleans, always recognised the above named children of John and Elizabeth McDonogh as his brothers and sisters. There was a family Bible kept by John McDonogh, of Baltimore, the father of John McDonogh, of New Orleans, lately deceased, in which he entered a family record in his own handwriting, containing, amongst other things entered, principally written by himself, a list of the births of his respective children. After the death of my wife, I sent that Bible, which was in two volumes folio, to the deceased John McDonogh, of New Orleans. I know the handwriting of the deceased John McDonogh, of New Orleans, and the letter now produced and shown me, marked "A B," is the proper handwriting of the said John McDonogh. The paper or letter marked "C D," now shown me, is also in the handwriting of said John McDonogh.

JOHN COLE.

*Deposition of Philip E. Thomas.*

And on the same day and year, to wit, the 26th day of March, A. D. 1851, before me, John Carrere, commissioner as aforesaid, personally appeared Philip E. Thomas, a witness for the complainants in the said cause mentioned in the caption to these depositions. And the said witness, being by me first carefully examined, and cautioned, and affirmed to testify the whole truth, makes affirmation, answers and says, as follows, to wit, I am now nearly seventy-five years of age, and reside in the city of Baltimore, and have resided there for upwards of sixty years; I knew John McDonogh, the father of John McDonogh, of New Orleans, lately deceased, and resided between the year seventeen hundred and ninety-five and eighteen hundred, within a few doors of him on Market street, in the city of Baltimore; I also knew by sight his son John, lately deceased at New Orleans, who then was a clerk

with William Taylor, a shipping merchant in Baltimore. The said John McDonogh, the elder, had several children, two of whom I knew, namely, John McDonogh, above spoken of and lately deceased, and Mary, who married John Cole, the witness just examined. Mary I knew personally.

P. E. THOMAS.

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

I, John Carrere, a commissioner appointed by the circuit court of the United States, for the fourth circuit, in and for the district of Maryland, pursuant to the act of Congress, entitled an "act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify, that the reason for taking the depositions hereunto annexed, of John Cole and Philip E. Thomas, is, that the said witnesses live at a greater distance than one hundred miles from the place of trial of the aforesaid cause of Mary Murdoch and others against C. Roselius and others, depending in the circuit court of the United States, for the fifth circuit and eastern district of Louisiana; and I do further certify, that before taking the said depositions I made out, and served on the Mayor of the city of Baltimore, (by leaving the same at his office,) and on Archer Ropes, attorney for the Mayor and City Council of Baltimore, in person, and on the American Colonization Society, separate notifications to be present at the taking of said depositions, and to put interrogatories, if they or any of them thought fit, to the said witnesses; that no notification to any other of the defendants in the said cause, or to any attorney of said defendants, or of any or either of them, to be present at the taking of said depositions, and to put interrogatories if they or any of them thought fit, was first made out and served on the said other defendants or any of them, or any attorney of them, or any of them; because, neither the said defendants nor any of them, nor any attorney of them, or any of them, were or was within one hundred miles of the place of caption; I do also certify, that the said depositions were taken at my office, in the city of Baltimore, on the twenty-sixth day of March, A. D. 1851, the time and place mentioned in the caption, and also in the notifications served as aforesaid on the adverse parties herein named, and that the same were taken in the presence of the attorneys of the complainants and the attorney of the American Colonization Society, neither the Mayor of the city of Baltimore nor the attorney of said city having attended according to the notifications served on them; and I do further certify, that I am not of counsel or attorney for either of the said parties, nor interested in the event of the said cause, and that the deponents were first carefully examined, and cautioned, and sworn and affirmed, to testify the whole truth, and that said depositions were then reduced to writing by me, and thereafter subscribed by the said deponents in my presence.

Given under my hand and seal at the city of Baltimore, in the district of Maryland, this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and fifty-one.

JNO. CARRERE, [SEAL.]
*Com. ct. ct., Md. dt.*

*Letter marked "A B," referred to in the foregoing deposition of John Cole.*

NEW ORLEANS, *November 28th*, 1839.

DEAR JANE: Not having heard from you for a long time, I take up my pen for an instant (for it is seldom, indeed, that my labors allow me a moment's respite, for I labor night and day,) to inquire of your health, your strength, your sight, and why it is that I never hear from you. In some of your former letters you informed me that "it was with difficulty you wrote, having been so long out of the habit;" that I can readily conceive, but still if your letters contained but a single line, merely saying that you were well, they would afford me pleasure. Drop me a line by mail, informing me of your health, and in what part of Baltimore, or its vicinity, you reside, that I may direct my letters to you, (as I presume you have a penny-post who carries and delivers them,) for I cannot think of imposing on your friend, Miss Johnston, so much trouble. Do you reside on a street or a road, and how must I direct to you? Inform me.

With affection, dear Jane, I am your brother,
JOHN McDONOGH.

Mrs. JANE HAMMET, Baltimore.

This letter has been opened and answered.
M. S. JOHNSTON.

Edorsed: "Mrs. Jane Hammet; care of Miss Maria S. Johnston, No. 62, Fayette and Eutaw streets, Baltimore, Maryland"—(mail.)

"A B." This letter or paper was produced and shown to John Cole, on his examination before me, the 26th of March, 1851, and by him testified unto before me.

JOHN CARRERE,
*Com'r ct. ct., U. S., Md. dist.*

*Letter marked "C D," referred to in the foregoing deposition of John Cole.*

NEW ORLEANS, *January 8th*, 1846.

ALEXANDER MURDOCK, esq.

DEAR SIR: I thank you for the few lines you addressed me, under date of the 27th ult., giving me the melancholy tidings of the departure of my sister, Mrs. Cole, from life to eternity. I had not expected

it, as I had hoped that yet many days were allotted her on earth. It is not for me, however, to complain, but to be thankful that the Most High had so wonderfully blessed her in life, and spared her so long; blessed her in the blessing to Abraham, of length of days and a numerous progeny. Still I cannot but lament her departure; lament the affectionate sister, the companion, the friend of my youth, (with whom I took sweet counsel,) whom I shall meet no more on earth, but with whom I trust I shall walk hereafter (as in youth) in fields of happiness and verdant green. Please say to Mr. Cole and her family that I sympathize with them in their loss, but which is her great gain.

And with respect, I am, sir, your ob't servant,

JOHN McDONOGH.

Baltimore, Maryland.

Endorsed.—"To Alexander Murdock, esq.,
"Baltimore, Maryland"—(mail.)

"C D." This letter or paper was produced and shown to John Cole, on his examination before me, the 26th of March, 1851, and by him testified unto before me.

JOHN CARRERE,
*Com'r ct. ct., Md. dist.*

JOHN COLE.

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

I, Thomas Spicer, clerk of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, do hereby certify, that John Carrere, esq., before whom the aforegoing depositions appear to have been taken, was at the time of taking the same, and now is, a commissioner duly appointed by the said circuit court, pursuant to the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States;" and to all his acts as such full faith and credit is and ought to be given, as well in courts of justice as thereout.

In testimony whereof I hereunto subscribe my name and affix the seal of the said circuit court, this twenty-sixth day of March, [SEAL.] in the year of our Lord one thousand eight hundred and fifty-one.

THOS. SPICER,
*Clerk circuit court.*

Endorsed: "1981." Filed 3d April, 1851, and opened in open court by order of court, this 28th April, 1851.

J. W. GURLEY, *Clerk.*

"A," offered in evidence by complainants on trial, 13th April, 1852.

J. W. GURLEY, *Clerk.*

*Depositions marked "B."*

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

Be it remembered that, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and fifty-one, at the city of Baltimore, in the district aforesaid, before me, John Carrere, a commissioner appointed by the circuit court of the United States, for the fourth circuit, in and for the district of Maryland, pursuant to the act of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," personally appeared Maria S. Johnson, a witness for the complainants in a certain civil cause depending in the circuit court of the United States, for the fifth circuit, in and for the eastern district of Louisiana, wherein Mary Murdock and her husband, William F. Murdoch, Ann Cole, and others, heirs-at-law of John McDonough, are complainants, and C. Roselius, W. E. Leverich, F. B. D'Aquin, and A. D. Crossman, executors of the will of John McDonough, the Mayor and City Council of Baltimore, the American Colonization society, and others, are defendants. And the said witness being by me first carefully examined, and cautioned, and sworn, to testify the whole truth, makes oath, deposes, and says, as follows, that she knew the late John McDonough, of New Orleans; she corresponded with him, and knew him personally; her correspondence with him commenced at the request of his sister, Mrs. Jane Hammet, at this place; deponent having written to said McDonogh in such request *for* and for Mrs. Hammet; after this, and a few years after, deponent became personally acquainted with said McDonough, in New Orleans, and when they became personally acquainted, he referred to their previous correspondence as above mentioned. Deponent has heard that said John McDonogh had a brother who died in New Orleans, but she knows that he had three sisters, and has heard that he had more; the three sisters whom she knows he had, were Mrs. Mary Cole, the wife of John Cole, at present and for many years past a resident of the city of Baltimore, Mrs. Jane Hammet, and Mrs. Margaret Ludden, the wife of Lemuel Ludden; all of the said three sisters are dead; Mrs. Jane Hammet left children. Deponent knew Robert, John, and Jesse, three of Mrs. Hammet's sons; Mrs. Hammet had other children, of whom Mrs. Snook was one; the names of the others she does not know or remember; Mrs. Cole likewise left children, of whom deponent knows several, namely, Ann Cole, Mary Murdoch, the wife of William F. Murdoch, Mrs. Hayne, wife of Mr. Hayne, all of the city of Baltimore; there was another daughter, Mrs. Jenkins, who is dead. Deponent understood that Mrs. Cole left some sons, the names of whom she does not know.

MARIA S. JOHNSTON.

And on the same day and year aforesaid, before me, the said com-

missioner, also personally appeared John Glenn, a witness for the complainants in the said cause mentioned in the caption to these depositions. And the said witness being by me first carefully examined, and cautioned, and sworn, to testify the whole truth, makes oath, deposes, and says, as follows, to wit, that he is fifty-five years of age and upwards, and is a lawyer by profession; that he has known Mr. John Cole for forty years and upwards, and knew his wife, the late Mrs. Mary Cole, and knows their family; the children of the said Mary and John Cole were as follows, Mrs. Mary Murdoch, wife of William F. Murdoch, Miss Ann Cole, Mrs. Louisa Sheffey, of Virginia, the wife of Hugh W. Sheffey, Mrs. Eliza Hayne, the wife of George Hayne, and Mr. George F. Cole, who lives in Charleston, South Carolina. Deponent also knew Mrs. Margaret Jenkins, the wife of George T. Jenkins; Mrs. Jenkins is dead, and left two or three children; the children deponent does not know; all of the above named children, with the exception of Mrs. Sheffey and George F. Cole, reside in the city of Baltimore.

JOHN GLENN.

And on the same day and year aforesaid, before me, the said commissioner, also personally appeared George Switzer, a witness for the complainants in the said cause mentioned in the caption to these depositions. And the said witness being by me first carefully examined, and cautioned, and sworn, to testify the whole truth, makes oath, deposes, and says, as follows, to wit, that he knew Mrs. Jane Hammet, late of Baltimore county, Maryland; she was the wife of Jesse Hammet, and they are both dead; Mrs. Hammet left children; two of her daughters are married to the two Messrs. Beaver, who reside in Carroll county, Maryland; another of her daughters married Mr. Pascault; she is dead; he thinks she left children; he knows she did; she was married twice; first to Mr. Dibb, and then to Mr. Pascault; by her first husband she left two children, viz., William Dibb and John Dibb, who live in the State of Maryland; he thinks she left children by her second husband, Mr. Pascault, but he cannot state this positively; another of Mrs. Hammet's daughters was married to Mr. Snook, and they reside in the city of Baltimore, Maryland; another daughter of Mrs. Hammet married Mr. Anderson, and she resides, as far as deponent knows, in Galveston, Texas; Mrs. Hammet had, also, the following sons, Jesse Hammet, Robert Hammet, and John Hammet; Jesse Hammet, the only one of those sons who is alive, resides in Baltimore county, Maryland.

his
GEORGE ⋈ SWITZER.
mark.

And on the same day and year aforesaid, before me, the said commissioner, also personally appeared Mrs. Ann Stanly, a witness for the complainants in the said cause mentioned in the caption to these depositions; and the said witness being by me first carefully examined, and

cautioned, and sworn to testify the whole truth, makes oath, deposes, and says as follows, to wit: That she knew Mrs. Mary Cole, the wife of John Cole, of the city of Baltimore, in the State of Maryland; the said Mary Cole is dead, and left the following children, Mary Murdoch, Ann Cole, Eliza Hayne, Louisa Sheffey, and Margaret Jenkins, and George F. Cole. All of them are living except Mrs. Margaret Jenkins, who is dead, and who left three children, namely, George Jenkins, Mary M. Jenkins, and Conway Jenkins, all of whom are infants, under the age of twenty-one years, and reside in the city of Baltimore, State of Maryland.

ANN STANLEY.

THE UNITED STATES OF AMERICA,

*District of Maryland, to wit:*

I, John Carrere, a commissioner appointed by the circuit court of the United States, for the fourth circuit, in and for the district of Maryland, pursuant to the act of Congress entitled "an act for the more convenient taking of affidavits and bail in civil causes depending on the courts of the United States," do hereby certify, that the reason for taking the depositions hereunto annexed of Maria S. Johnston, John Glenn, George Switzer, and Ann Stanley, is that the said witnesses live in the city of Baltimore, and at a greater distance than one hundred miles from the place of trial of the aforesaid cause of Mary Murdock and others, heirs at law of John McDonough, against C. Roselius and others, executors of the will of John McDonogh and others, depending in the aforesaid circuit court of the United States, for the 5th circuit, in and for the eastern district of Louisiana. And I do further certify, that before taking said depositions, I gave notice to the mayor and city council of Baltimore, and the American Colonization Society, to be present at the taking of said depositions, and to put interrogatories, if they, or either of them, thought fit; and that the attorneys of the said Mayor and Council of Baltimore, and of the said American Colonization Society, were present at the taking of the same. That no notification to any other of the defendants, or to any attorney of any of them, to be present, and to put interrogatories if they thought fit, were made out and served by me on said defendants, or any attorney of them, or any of them, because neither the said defendants, nor any attorney of them, were or was within one hundred miles of the place of caption of the said depositions. I do further certify, that I am not of counsel or attorney for either of the said parties, nor interested in the event of said cause, and that the deponents were first carefully examined, and cautioned, and sworn to testify the whole truth, and that said depositions were then reduced to writing by me, and thereafter subscribed by the deponents in my presence.

Given under my hand and seal, at the district aforesaid, this thirteenth day of May, eighteen hundred and fifty-one.

JNO. CARRERE.

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

I, Thomas Spicer, clerk of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, do hereby certify, that John Carrere, before whom the aforegoing depositions were taken, was at the time of taking the same, and now is, a commissioner, appointed by the said circuit court of the United States, for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," and that to all of his acts, as such, full faith and credit is and ought to be given, as well in courts of justice as thereout.

In testimony whereof I hereunto subscribe my name and affix the seal of the said circuit court, this thirteenth day of May, in the year of our Lord one thousand eight hundred and fifty-one.

[The seal of the circuit court, Maryland.]

THO. SPICER,
*Clerk circuit court.*

Endorsed—
"Filed 21st May, 1851—(1981.)
J. W. GURLEY, *Cl'k.*

"Opened by consent, filed this day, Nov. 4, 1851.
"J. W. GURLEY, *Clerk*,
"By W. CORNELIUS, *D. C.*

"B, off'd in evidence by the compl'ts on trial, 13th April, '52.
J. W. GURLEY, *Cl'k.*"

*Document C.*

Letters of guardianship offered in evidence by complainants.

THE STATE OF MARYLAND.

At an orphan's court held for Baltimore county, in the court-house in the city of Baltimore, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and fifty-one. Present, Charles Howard, John H. Briscoe, John Burnes, esquires. Among other proceedings were the following, to wit:

On application the court appoints William F. Murdoch guardian to Thomas Welsh, Frank E. Welsh, and William P. Welsh, orphan children of Thomas Welsh and Maria Welsh, deceased; and the said William F. Murdoch, being here present in court, accepts of the said guardianship, and offers Alexander Murdoch and Thomas Murdoch as his securities for the faithful performance of his duty as guardian to the said Thomas Welsh, Frank E. Welsh, and William P. Welsh, who are approved of by the court, and bond ordered to be executed accordingly. (Bond filed and recorded.)

In testimony that the aforesaid is a true copy taken from one of the records of the proceedings of the orphan's court, for Baltimore county, I hereunto subscribe my name, and affix the seal of the said court, this twenty-sixth day of March, in the year of our Lord eighteen hundred and fifty-one.

[SEAL.]

Test: D. M. PERINE,
*Register of wills for Baltimore county.*

MARYLAND, *sct.*

I, Charles Howard, presiding justice of the orphan's court, for Baltimore county, in the State aforesaid, do certify, that the aforegoing attestation of David M. Perine, register of wills for said county, is in due form and by the proper officer.

Given from under my hand, at the city of Baltimore, this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and fifty-one.

CHARLES HOWARD.

Endorsed—"U. S. circuit court. 1981. Filed 12 April, 1851. J. W. Gurley, clerk." "C, offered in evidence by complainants on trial, 13 April, 1852.

"J. W. GURLEY, *Clerk.*"

Copy of register of births (D) offered in evidence by complainants.

Copy from one of the backs of the 2d volume of the family Bible, printed in London 1745, found among the effects of the late John McDonogh.

Ages of Henry McDonogh's children, of York county, Pennsylvania:

| | |
|---|---|
| John McDonogh, | born Aug. 8, 1737. |
| Elizabeth McDonogh, | born Aug. 8, 1739. |
| Mary McDonogh, | born Dec. 25, 1747. |
| Joseph McDonogh, | born Sept. 13, 1749. |
| Henry McDonogh, | born Feb. 13, 1752. |
| Ann McDonogh, | born Oct. 4, 1754. |
| Jean McDonogh, | born Nov. 6, 1757. |

Ages of John McDonogh's children, and Rosalba, his wife:

| | |
|---|---|
| Mary, | born Aug. 16, 1759, in Philadelphia. |
| Saragh, | born Feb. 20, 1762, in York. |
| Margaret, | born April 11, 1764, in do. |

Ages of said John McDonogh's children, and Elizabeth, his wife:

| | |
|---|---|
| Elizabeth, | born June 26, 1769, in York. |
| Ruth, | born Feb. 10, 1771, in do. |
| Ann, | born July 9, 1773, in do. |
| Jeanet, | born May 26, 1775, in Baltimore. |
| Mary, | born July 11, 1777, in do. |
| John, | born Dec. 29, 1779, in do. |

Joseph, born Feb. 7, 1783, in Baltimore.
Thomas, born April 3, 1785, in do.
Henry, born June 8, 1787, in do.
James, born Aug. 15, 1789, in do. (at 2 o'clock morning.)
Margaret, born Dec. 6, (torn) 1791 in pencil.

A true copy. N. O., 17th Feb'y, 1852.

W. A. HOLT,
*Clerk of the test'y ex'rs of John McDonogh.*

Endorsed—"U. S. circuit court. Copy from the family Bible register of births."

*Document "E."*

Will and memoranda of John McDonogh.

(Note.—For this document see pages from 16 to 92 of this transcript.)

*Document F.*

Inventory of the estate passed before Mazareau and Layton.

(For this document see the bound volume annexed to this transcript, and marked "6 F" by the undersigned clerk to identify the same.)

J. W. GURLEY,
*Clerk U. S. circuit court.*
By W. CORNELIUS,
*Dep'y clerk.*

*Document G.*

Offered in evidence by complainants. Copy of executor's account and petition.

Fifth district court of New Orleans, No. 4112. Succession of John McDonogh. Copy of account of the testamentary executors of the estate of John McDonogh.

The undersigned, testamentary executors of the last will and testament of the late Mr. John McDonogh, respectfully submit the annexed account of their administration during the past year, exhibiting the sums collected and the payments made by them for said succession, as well as the claims which are due by, or have been presented against it, some of which are admitted and others are disallowed, either as not due at all, or as exorbitant. When no observation accompanies the statement of the claim, it is admitted to be due; but when the words "not allowed" are added to it, the party preferring the claim is called upon to prove it, on opposition duly made.

The undersigned are the only acting executors of the last will and testament of the testator, and, as such, they have devoted a large share of their time and attention to the administration of the succession. They have been compelled, by unavoidable necessity, to take the

seizin of the whole estate, as there has not been, nor is there yet, any other person to take charge of the succession. Various suits have been instituted against the undersigned, as executors, in two of which the whole estate of the testator is involved: one brought in the names of the States of Louisiana and Maryland, and the other by the alleged legal heirs of the testator, on both of which the dispositions of the will are sought to be set aside. The former has been decided in favor of the executors by the honorable the fifth district court of New Orleans, and is now pending in the honorable the Supreme Court on the appeal of the plaintiffs, and will in all probability be argued and determined in that tribunal in the course of the ensuing term; the latter is pending in the honorable the circuit court of the United States, and will be tried during the month of November or December next.

It is proper here to observe, that the commissions allowed by law to the testamentary executors are proposed to be divided between the acting executors, on the grounds, first, that Benjamin C. Howard, R. R. Gurley, and Brantz Mayer, being citizens and residents of other States in the Union, could not legally qualify as executors without giving bond and security, and not having done so, they never have qualified; and, secondly, said gentlemen have never acted as executors, but left the State of Louisiana the very day, or the day succeeding, their alleged qualification, and have never returned thereto nor been legally represented therein. Under the dispositions of the will, the functions of the undersigned are to continue for certain purposes therein mentioned during a considerable length of time; and the situation of the succession is such, that it is imperatively necessary that the undersigned should continue in the discharge of their functions, and it will be required to sell the bonds of the First Municipality, amounting to two hundred and sixteen thousand dollars, for the purpose of paying the debts of the succession still remaining unpaid, and to carry into effect the dispositions of the will. All the property not specially accounted for in this account, remains in kind, no property whatever having been sold, except the furniture in the late residence of the testator, and in the "mansion house" on the levee, and some other moveables, for the proceeds of the sale of which the undersigned render an account. Respectfully submitted.

(Signed) C. ROSELIUS,
F. B. D'AQUIN,
WM. E. LEVERICH,
A. D. CROSSMAN,
C. ROSELIUS.

N. B. The following named slaves have died since the death of the testator: George or John Kenny, Dec'r 8th, 1850, in Luzenburg's hospital; John Baring, Jan'y 20th, 1851, in McDonoghville; Lion, infant child, Sept'r 20th, 1851, in do.; Big Henry, about Dec'r 11th, 1850, at the St. James place.

## RECEIPTS.

| | | | |
|---|---|---|---|
| 1850. | Amount of cash found by the executors, viz: | | |
| Dec. 2 | In Bank of Louisiana | $6,861 90 | |
| | In the late residence of the testator, in McDonogh | 156 23 | |
| | | | $7,018 13 |
| Dec. 2 | Amounts received per sales, viz., of moveables in the mansion house on the Levee $1,091 00 | | |
| | In residence of testator, in McDonogh 533 35 | | |
| | $1,624 25 | | |
| | Less charges on the same 67 73 | | |
| | | 1,556 62 | |
| Jan. 31 | Lumber of an old house, in McDonogh, pulled down to make the Levee | 20 00 | |
| Nov. 11 | Produce, &c., of the Allard plant'n, from A. Berge $17 95 | | |
| June 27 | Of St. Geme place, from A. Dorvelle 248 12 | | |
| Oct. 4 | Sale on do., of 4 steers do 80 00 | | |
| | Of press., in McDonogh, &c., sup'tds 83 70 | | |
| | | 429 77 | |
| | | | 2,006 39 |
| | For interest, coupons in bonds of Municipality No. 1. | | |
| June 17 | For 100, due 6th March, 1851 $3,000 00 | | |
| Aug. 21 | For 116, due 6th March, 1851 3,480 00 | | |
| Sept. 12 | For 216, due 6th Sept'r, 1851 6,480 00 | | |
| | | 12,960 00 | |
| Aug. 14 | Balance due on 230 coupons, due 6th September, 1849 $4,444 12 | | |
| | With interest 586 75 $5,030 87 | | |
| | Less due, bill of the Municipality 800 00 | | |
| | | 4,230 87 | |
| | | | 17,190 87 |
| | Amount forward | | 26,215 39 |
| | *Amounts received for claims.* | | |
| 1851. | | | |
| April 19 | From John Hoey, for premium of insurance paid on buildings in square in the rear of the second Municipality, leased by him from the testator | 61 21 | |
| Sept. 4 | From same for prem'm of insurance on same $55 65 | | |
| | From same for taxes on same for | | |
| | 1850. Municipality $406 25 | | |
| | State 52 75 459 00 | | |
| | | 514 65 | |
| July 10 | From George Urquhart, agent of Andrew Dumford, on account of the mortgage debt due by the latter $5,000 00 | | |
| | With interest to 1st instant, 6 per cent. 1,413 59 | | |
| | | 6,413 59 | |
| 31 | From Branch of the Louisiana State Bank, for interest on deposites | 185 78 | |
| Aug. 16 | Amount collected at suit of Executors versus Rousseau et al's., for money stolen by Couye from dwelling of testator, in McDonogh | 178 05 | |
| | | | 7,353 32 |
| | *For bills receivable, collected:* | | |
| | Freret Bros., due Jan. 4, 1851, on account of $1,401 57 | $701 57 | |
| | Freret Bros., due Feb. 4, 1851 | 747 82 | |
| | Do. Mar. 4, 1851 | 751 08 | |

## RECEIPTS—Continued.

| | | | | |
|---|---|---|---|---|
| Aug. 16 | Freret Bros., due Apr. 4, 1851..... | 732 28 | | |
| | Do. May 4, 1851..... | 735 78 | | |
| | | | 3,668 53 | |
| | C. Reselius, December 19, 1850..... | | 1,000 00 | |
| | Charles Schmidt, May 8, 1850...$975 00 | | | |
| | With interest to Jan. 27, 1851... 122 10 | | | |
| | | 1,097 10 | | |
| | Interest due, May 8, 1851..... 975 00 | | | |
| | With interest to May 1, 1851.... 115 86 | | | |
| | | 1,090 86 | | |
| | | | 2,187 96 | |
| | Police Jury, parish Jefferson, due 29th December, 1849..... | 491 49 | | |
| | With interest to 1st August, 1851..... | 63 06 | | |
| | | | 554 55 | |
| | | | | 7,411 04 |
| | Amount forward..... | | ..... | 40,979 75 |
| | *Amount of rent notes and rent bills, collected.* | | | |
| | In month of October, 1850..... | | 47 31 | |
| | Do. November, 1850..... | | 378 34 | |
| | Do. December, 1850..... | | 3,120 66 | |
| | Do. January, 1851..... | | 5,340 52 | |
| | Do. February, 1851..... | | 6,140 79 | |
| | Do. March, 1851..... | | 3,390 80 | |
| | Do. April, 1851..... | | 3,511 54 | |
| | Do. May, 1851..... | | 3,429 75 | |
| | Do. June, 1851..... | | 4,606 34 | |
| | Do. July, 1851..... | | 4,382 32 | |
| | Do. August, 1861..... | | 4 654 43 | |
| | Do. September, 1851 ..... | | 3,928 95 | |
| | Do. October, 1851..... | | 3,822 23 | |
| | | | | 46,753 98 |
| Oct. 26 | Amount received from the New Orleans Insurance Company for insurance on building at the corner of St. Peter and Julia streets, destroyed by fire on the night of the 21st to 22d July..... | | ..... .... | 250 00 |
| | Total receipts..... | | ..... | $87,983 73 |

New Orleans, October 27th, 1851.

## PAYMENTS.

| | | | | | |
|---|---|---|---|---|---|
| 1850. | | | | | |
| Oct. | 30 | Paid Peters & Millard for brandy | $1 00 | | |
| | | for medicines to Sickles & Co., & others | 4 30 | | |
| | | | | $5 30 | |
| | 31 | ferriage, cart and carriage to McDonogh | $1 50 | | |
| | | " " " from " | 1 50 | | |
| | | | | 3 00 | |
| | | hire of furniture cart for bringing over books and papers to office of executors | | 3 50 | |
| | | Arthur for hire of carriage to McD's to get books and papers | | 6 00 | |
| | | | | | $17 80 |
| Nov. | 1 | Jim Thornton for marketing, &c., for slaves | | 4 70 | |
| | 4 | ferriage to McDonogh | | 20 | |
| | 6 | Jim Thornton for marketing, &c., for slaves | | 7 25 | |
| | 7 | for bringing over iron chest to the office of the executors | | 2 75 | |
| | 11 | for cartage, tables, and chairs | $0 50 | | |
| | | brooms and brushes | 0 40 | | |
| | | | | 90 | |
| | 13 | Jim Thornton for marketing, &c | | 11 60 | |
| | 16 | J. E. Pollock for a hat for slave Judge | | 2 00 | |
| | | W. A. Peck for a pair of shoes for slave Judge | | 1 75 | |
| | 18 | Jim Thornton for marketing | | 9 00 | |
| | 23 | " " " | | 11 65 | |
| | 23 | carriage hire, &c., to the Allard plantation on the bayou St. John, and to the St. Geme place on the Gentilly road, to take inventories of the same | | 13 70 | |
| | 23 | Slark, Day & S. for hooks for keys of property | | 1 00 | |
| | 29 | Jim Thornton for marketing | | 14 40 | 80 90 |
| | | To amount forwarded | | | 98 70 |
| Dec'r | 3 | Jim Thornton for marketing for slaves, and for 2 sacks corn for mules | | 13 15 | |
| | 4 | W. A. Holt, clerk, for services | | 100 00 | |
| | 6 | N. O. Delta for printing 1000 copies of the will and instructions of the testator, on account of $350 | $250 00 | | |
| | | for advertising his death | 1 00 | | |
| | | | | 251 00 | |
| | 9 | M. Grevot for sundry payments made by him: | | | |
| | | for a pair of shoes for testator | $3 50 | | |
| | | advertising his death in True Delta | 1 00 | | |
| | | drayage and ferriage | 0 75 | | |
| | | marketing to Jim Thornton, 27th October | 5 00 | | |
| | | | | 10 25 | |
| | 8 | H. Dumford for wages as overseer of slaves in McDonogh | | 8 00 | |
| | 9 | Orleans Insurance Company for insurance on buildings on Exchange place, between Conti and St. Louis streets | | 33 75 | |
| | 9 | A. Dorriscourt for act of sale of 29 squares in Milinburg, and expenses | | 37 00 | |
| | 10 | Thomas Kelly on account of making levee of 140 arpens front on the Mississippi, in parish of Plaquemines | | 900 00 | |
| | 13 | Jim Thornton for marketing for slaves in McDonogh, and for coal | | 23 75 | |

## PAYMENTS—Continued.

| | | | |
|---|---|---|---|
| 14 | Paid Branch Louisiana State Bank protest of a note of Mrs. French, protested in error | $3 00 | |
| 18 | Levi Pierce, attorney of executors, on account of fee for professional services rendered and to be rendered in the various suits already instituted, as well as for such as may hereafter be brought | 5,000 00 | |
| 1850. | To amount brought forward | 6,379 90 | $98 70 |
| Dec'r 20 | Orleans Insurance Company for insurance on buildings on New Levee and Tchoupitoulas streets, between Gravier and Poydras streets. | 180 00 | |
| 21 | Jim Thornton for marketing for slaves in McDonogh | 18 70 | |
| 21 | Priestly and Bien for hardware for buildings | 6 65 | |
| 21 | Terrell and Bates for brogans for slaves | 17 75 | |
| 21 | Marshall & James for dry goods for slaves | 78 29 | |
| 21 | for varnish, towels, brushes, &c. | 2 05 | |
| 21 | for a telegraphic despatch from Baltimore | 2 10 | |
| 21 | M. Turner for coal for office | 7 50 | |
| 21 | city tax of Lafayette for 1850 | 20 00 | |
| 24 | R. Richards for a shovel | 1 00 | |
| 24 | N. C. Folger for clothing for slaves | 430 00 | |
| 28 | D. L. Holiday & Co. for corn for mules | 3 75 | |
| | Jim Thornton for marketing for slaves | 15 75 | |
| | John C. Taylor for making copies of instructions of testator | 90 00 | |
| | Joseph Fernandez for funeral expenses of testator | 355 00 | |
| | P. M. Guerurger for funeral clothes for same | 56 50 | |
| | Thomas Kelly on account of contract for making levee in Plaquemines | 900 00 | |
| | W. A. Holt, clerk, for services | 100 00 | |
| | | | 8,684 94 |
| 1851. | | | |
| Jan. 2 | Crescent for advertising notice to applicants | 12 00 | |
| 3 | H. Meyer for soap, oil, matches, &c | 45 | |
| | N. Jarvis & Co., paints, oil, &c., for buildings | 19 76 | |
| | To amount forward | 32 21 | 8,763 64 |
| | Jim Thornton for marketing | 16 30 | |
| | A. Herren, balance of wages due Toby Gray, as overseer in McDonogh | 89 86 | |
| | N. O. Picayune for advertising lost bonds, death of testator, and printing funeral tickets | 105 00 | |
| | N. O. Delta, in full, for printing will and instructions of testator in pamphlet form | 100 00 | |
| 2 | John Baxter for clapboards for corner of St. Peter and Julia sts | 5 40 | |
| 4 | Union Bank of Louisiana for one year's interest at 6 per ct., (to 4th January, 1852,) on testator's note for $50,000, secured by mortgage on the Orleans theatre | 3,000 00 | |
| 8 | Wheeler & Blake for brooms, brushes, &c | 55 | |
| | H. Dumford for wages as overseer | 8 33 | |
| | C. Roselius amount advanced for support of slaves in McDonogh | 15 00 | |
| 9 | Sun Mutual Insurance Co. for insurance on buildings on Poydras street, between Gironde and Front streets, for ac't John Hoey | 61 25 | |
| | "Luzenberg's Hopital" for medical attendance and funeral expenses of slave George, (insane.) | 92 00 | |

## PAYMENTS—Continued.

| | | | | |
|---|---|---|---|---|
| Jan. | 11 | Paid William McCracklen for armoir for papers..... | $30 00 | |
| | | Filkins & Burns for plank, corner of St. Peter and Julia streets..... | 6 08 | |
| | | Jim Thornton for marketing..... | 18 35 | |
| | 15 | L. Armstrong for keeping seals in Macdonough. | 25 00 | |
| | | John Johnson & Co. for candles, &c..... | 15 04 | |
| | | To amount forward..... | 3,620 37 | $8,763 64 |
| | 16 | R. Richards for candlesticks and snuffers..... | 90 | |
| | 17 | B. Cohen for clothing for Jim Thornton..... | 41 00 | |
| | | for tax on suits for writ vs. Wm. Hur, St. Herberg, and Lesson..... | 7 00 | |
| | | sheriff of parish of Orleans (through assistant attorney,) on account of rents collected..... | 300 00 | |
| | 20 | Jim Thornton for marketing..... | 26 27 | |
| | | Jas. Henderson for cypress tables to arrange books and papers..... | 8 50 | |
| | 22 | T. Cassedy for shoes for George..... | 1 25 | |
| | 23 | Commercial Water Works for water for 1851... | 10 00 | |
| | 25 | Jim Thornton for marketing..... | 12 10 | |
| | 29 | 2d municipality police jail for jail fees of slave Henry..... | 4 21 | |
| | 30 | D. F. Burthe for lumber for buildings..... | 20 50 | |
| | | Joseph Harrison for cleaning privy No. 214, Bourbon..... | 10 00 | |
| | 31 | Loof for a small book-case..... | 5 00 | |
| | | Ferriage negroes, omnibus hire, cleaning chimneys, and for candles, &c..... | 3 40 | |
| | | D. L. Holliday & Co. for corn for mules, 30th.. | 13 25 | |
| | | Frederick Young for hire of horse to Dumford.. | 10 00 | |
| | | W. A. Holt, clerk, for services..... | 100 00 | |
| | | C. W. Dickey for services as superintendent, and for provisions for slaves in McDonogh..... | 81 55 | |
| | | Sun Mutual Insurance Co. for insurance on buildings on Hevia, Gironde, and Freret street, for ac't John Hoey..... | 55 65 | |
| | | | | 4,330 95 |
| Feb. | 1 | Evans for soap, matches, &c..... | 75 | |
| | 3 | Thomas Kelly, in full of contract, for making lever in Plaquemines..... | 1,000 00 | |
| | | Forward..... | 1,000 75 | 13,094 59 |
| 1851. | | Amount forward..... | 1,000 75 | 13,094 50 |
| Feb'ry | 6 | Paid Mace for fixing desk and armoir..... | 5 00 | |
| | | H. Dumford for wages as overseer in MacDonogh | 8 33 | |
| | 7 | W. Patterson for sashes, corner St. Peter and Julia street..... | 6 00 | |
| | 8 | M. R. Haggerty & Co. for cotton for ceiling of same..... | 3 15 | |
| | | Filkins & Burns for lumber for No. 16, New Levee street, and corner St. Peter and Julia streets..... | 155 43 | |
| | 18 | Jim Thornton for weekly allowance and for corn purchased..... | 4 80 | |
| | | G. Brusie for stationery..... | 14 10 | |
| | | For baize, sponge, tacks, &c..... | 1 00 | |
| | 19 | Z. Heuson for clapboards for corner Roffegnac and Tchoupitoulas..... | 4 00 | |
| | | C. W. Dukey for services as superintendent and for provisions for slaves in McD..... | 92 90 | |

PAYMENTS—Continued.

| | | | |
|---|---|---|---|
| | Paid J. B. Steel & Co. for blanks, blank books, and stationery | $164 52 | |
| | G. B. Sanford, for lumber for repairs to Julia street houses | 232 00 | |
| 22 | Thomas Wright for window sashes for Royal street, near barracks | 6 00 | |
| 23 | Z. Heuson for clapboards for Triton Walk and St. Joseph street | 31 85 | |
| 24 | On account of taxes of municipality No. 2, for 1850 | 5,500 00 | |
| | Charles Kuhn for repairs to house on Levee st., between D'Enghien and Spain streets, and for jacket for George | 13 50 | |
| 1851. | Amount forward | 7,243 33 | $13,094 59 |
| Feb. 24 | Paid for carriage hire to take possession of the "Allard place" | 4 00 | |
| | Outlaw for tax on suits vs. Heirs, Lesson & Ragot | 19 50 | |
| 28 | C. W. Duky for services as superintendent and for provisions for the slaves in McDonogh | 78 89 | |
| | B. Perret on account of services for taking care of personal property, and as porter of the executors | 32 00 | |
| | William A. Holt, clerk, for services | 100 00 | |
| | | | 7,477 72 |
| March 4 | Orleans Insurance Company, for insurance on bakery and adjoining buildings on N. Levee street, between Poydras and Girod streets | 159 00 | |
| 5 | H. Dumford for wages as overseer of slaves in McDonogh | 8 33 | |
| 8 | Thomas Geyan for repairing roofs of sundry buildings | 21 00 | |
| March 8 | Pat. McGill for shoeing mules | 11 40 | |
| | B. Perret on account services, taking care of personal property, and as porter of the executors | 15 00 | |
| | C. C. Gaines for a pad-lock | 30 | |
| 11 | P. Renaud for tax of parish of St. Bernard for 1850, on properties valued at $7,700 | 4 65 | |
| 15 | P. Butler, for making gutters to buildings of St Joseph street, and corner of Edward and Camp streets | 13 32 | |
| 1851. | Amount forward | 233 00 | 20,572 31 |
| Mar. 15 | Paid C. W. Duky for services as superintendent, and for provisions for slaves in McDonogh | 51 00 | |
| 1 | Jim Thornton for weekly allowance to date since 14th February, and amount due previously | 22 50 | |
| 17 | Ganba for fixing locks, &c., corner Chartres and Jefferson streets | 1 50 | |
| 17 | Commercial Bulletin, for one year's subscription, from 4th February | 12 00 | |
| 18 | Tax of municipality No. 2, for 1850, on properties valued $426,500 .... $6,927 37<br>Less 2½ per cent. deduct. 173 18 | | |
| | | $6,754 19 | |
| | Less am't paid on acc't, 24th Feb.. 5,500 00 | | |
| | | 1,254 19 | |
| | J. D'Aquin amount of bill 1st municipality police jail, for expenses slave Ben | 15 87 | |

1847.

## PAYMENTS—Continued.

| | | | |
|---|---|---|---|
| Mar. 21 | Paid F. D. Gott for removing and rebuilding extra front of building on Chartres near Jefferson streets, and for repairs and iron columns ..... | $430 00 | |
| | Filkins & Burns for flooring and lumber for sundry buildings..... | 77 59 | |
| | N. Bermudy for making banquets on Newton and Jefferson streets, McDonogh..... | 98 77 | |
| | H. T. Sherman for cedar, cypress, and flooring for Mansion House on levee..... | 67 17 | |
| | Twebill & Edwards for screws, bolts, &c., for repairs of No. 16, New Levee street..... | 35 80 | |
| | Forward..... | 2,299 39 | $20,572 31 |
| 1851. | Amount forward..... | 2,299 39 | 20,572 25 |
| Mar. 21 | clerk 3d district court for fees in suit vs. B. Loring and J. Couliff ..... | 41 40 | |
| 21 | sheriff fees vs. same..... | 46 21 | |
| 21 | A. S. Phelps for surveying lands in the parish of Jefferson by order of 3d district court, in suit of Testator vs. J. B. De Gruys..... | 130 50 | |
| 22 | Joseph Harrison for cleaning privies of Mansion House and Western Exchange..... | 35 00 | |
| 26 | Z. Heuson for sash doors for Bourbon st., near Orleans st..... | 7 00 | |
| 31 | C. W. Duky for services as superintendent, and for provisions for slaves in McDonogh..... | 53 33 | |
| 31 | for medicines for Ellen, Henry, and Dick ..... | 1 00 | |
| 31 | Thos. Geyan for repairing slating of Orleans theatre ..... | 50 00 | |
| 31 | clerk's fees in suits vs. W. Crawford, jr., in 2d district court..... $8 65<br>vs. F. W. Rensick & Sam'l Stewart, & Wm. Pentalba, in 3d district court... 37 50 | 46 15 | |
| 31 | J. C. Morgan for stationary..... | 22 50 | |
| 31 | J. M. Johnson & Co. for provisions furnished the place in McDonogh..... | 122 65 | |
| 31 | J. P. McDonald for shoes for slaves..... | 34 25 | |
| 31 | Priestly and Bien for hardware for repairs for sundry properties..... | 84 07 | |
| 31 | Filkins and Burns for lumber for bar room and store under Mansion House..... | 188 13 | |
| 31 | W. A. Holt, clerk, for services..... | 100 00 | |
| 31 | for lock for store under Mansion House..... | 2 00 | |
| | | | 3,263 57 |
| 1851. | Amount forward..... | ..... | 23,835 88 |
| Aprl. 3 | R. Johnson, sheriff, for taxes for 1849 and '50, in parish of Plaquemines..... | 232 78 | |
| 4 | Z. Heuson for glass doors for building corner Orleans and Bourbon streets..... | 14 00 | |
| 5 | M. Barry, sheriff, for taxes of 1850 in parish Lafourche..... | 62 00 | |
| 5 | Jno. Wilson for shoes for slave George..... | 1 50 | |
| 5 | H. Dumford for wages as overseer in McDonogh | 8 33 | |
| 9 | Z. Heuson for clap boards for house in Orleans, near Vilbre street ..... | 32 40 | |
| 9 | Bridge & Bro. for lime for whitening Mansion House and Western Exchange..... | 10 00 | |
| 10 | D. L. Holliday & Co. for corn for mules..... | 11 03 | |

PAYMENTS—Continued.

| | | | | |
|---|---|---|---|---|
| April | 10 | Paid T. Meyer for brushes, brooms, &c | $0 85 | |
| | 11 | Jos. Harrison for hauling bricks &c., to corner Orleans and Bourbon streets | 7 50 | |
| | 14 | J. D. Nash for painting openings of do | 30 00 | |
| | 14 | Bridge & Bros. for a bag of hair | 1 10 | |
| | 15 | R. Clannon for whitening brushes | 3 00 | |
| | 15 | C. W. Duky for services as superintendent, and for provisions for slaves in McDonogh | 53 35 | |
| | 15 | for medicines for slaves | 2 70 | |
| | 15 | B. Perret on account services taking care of properties, and as porter of executors | 26 00 | |
| | 18 | Chas. Dugwen for fitting keys to two locks corner Orleans and Bourbon streets | 1 00 | |
| | 19 | Levi Pierce, attorney of executors, on account of fee for professional services rendered and to be rendered in the various suits already instituted, as well as for such as may hereafter be brought | 5,000 00 | |
| 1852. | | Amount forward | 5,497 54 | $23,835 88 |
| April | 21 | W. F. Scheixnayder, 1st lieutenant 1st municipality police, a reward for recovering of a part of stolen property of succession | 200 00 | |
| | 21 | A. W. Scates for State tax of 1850 in 3d rep. dist., on property valued at $301,300 | 638 50 | |
| | 21 | Wm. E. Florence, collector, for State tax for 1850, in 1st rep. dist. | 129 15 | |
| | 21 | A. Lusto, collector, for State tax for 1850 in 7th rep. dist | 38 68 | |
| | 21 | M. Barnett, jr., for parish tax in 1848 in E. Baton Rouge | 30 00 | |
| | 21 | J. L. Petit, sheriff, for taxes of parish of Iberville for 1850 | 116 00 | |
| | 21 | municipality No. 2 for paving corner of Baronne and Girod streets | 331 22 | |
| | 21 | H. Dumford for wages as overseer of slaves in McDonogh | 4 33 | |
| | 23 | Z. Heuson for shingles for Orleans st. near Villere | 10 00 | |
| | 26 | Jim Thornton for weekly allowance | 7 50 | |
| | 28 | Jn. Gharky for skiff for slaves | 9 00 | |
| | 30 | C. W. Duky for services as superintendent, and for provisions for slaves in McDonogh | 52 30 | |
| | 30 | mechanics and laborers of succession | 16 25 | |
| | 30 | W. A. Holt, clerk, for services | 100 00 | |
| | 30 | State tax for 1850 in parish of Orleans, right bank | 116 21 | |
| | | | | 7,296 68 |
| 1851. | | | | |
| May | 2 | E. A. Davis for medicines for slaves | 85 | |
| | 5 | Z. Heuison for shingles for Orleans, near Villere | 5 00 | |
| | | Thos. Askin, collector for State tax for 1850, in 2d rep. district | 133 40 | |
| | | Amount forward | 139 25 | 31,132 56 |
| May | 5 | Paid Thos. McKeever, collector for State taxes for 1850, in 4th rep. district | 233 35 | |
| | | F. Young, on 3d, for hire of horse to go to Dumford's | 4 00 | |
| | 6 | Crescent for advertising notice to debtors and creditors of the estate | 24 00 | |
| | 7 | A. Dowille for half of State tax for 1850, on the St. Geme plantation | 41 15 | |

1848.

## PAYMENTS—Continued.

| | | | |
|---|---|---|---|
| May 7 | Paid Pierre Procturs for repairs to chimney of blacksmith shop, on Burgundy, between Toulonne and St. Louis streets | $5 00 | |
| | for carriage hire to Fletas place, and Allard plantation, to appraise and repair them | 24 50 | |
| | Judge Winter for commission to take testimony in case of Cr. Grant, jr., vs. Testator | 8 00 | |
| | Wm. H. Wilkins for flooring and lumber for buildings, corner of Bourbon and Orleans, of Chartres and Jefferson, and on Roffignac, between Tchoupitoulas and New Levee streets | 190 38 | |
| | I. P. McDonald for brogans for slaves | 40 00 | |
| | J. M. Johnston & Co. for groceries, &c., for place in McDonogh | 54 92 | |
| | C. Connell for repairing side walk and gutters in St Joseph, near Baronne street | 20 00 | |
| | Patrick McGill for shoeing mules and repairing cart | 26 00 | |
| 1851. | Forward | 804 55 | 31,132 56 |
| May 7 | Paid J. D. Nash for painting openings corner Chartre and Jefferson streets | 15 50 | |
| 10 | mechanics and laborers of succession | 21 00 | |
| 15 | C. W. Duky for services as superintendent, and for provisions for the slaves in McDonogh | 50 55 | |
| | B. Perret on account of services, taking care of property of succession, and as porter of executor | 30 00 | |
| 16 | P. Le Blanc, clerk of 5th district court, for fees due by the succession | 328 53 | |
| 17 | W. C. Duncan for clothing for Jim Thornton | 5 50 | |
| | P. Butler for repairing cistern's pipe corner of Camp and Edward streets | 2 00 | |
| 22 | Wheeler & Blake for brooms, &c | 30 | |
| | G. W. Morrison for soap | 25 | |
| 23 | M. Turner for coal | 26 50 | |
| 26 | J. D. Nash for painting shutters and fences in Chartres, near Jefferson st | 4 50 | |
| | Sam'l Patterson, collector for State and parish taxes for 1850, in the parish of Livingston | 84 00 | |
| 31 | J. J. Morter, rec'r for inventory of property in parish of Livingston, expenses and appraiser's fees | 20 00 | |
| | W. A. Holt, clerk, for services | 100 00 | |
| | A. W. Scates, collector for State tax for 1850, in 3d representative district, on a square in rear of city, omitted in former bill | 2 10 | |
| 1851. | Amount forward | 1,495 28 | 31,132 56 |
| May 31 | Paid C. W. Duky for services as superintendant, and for provisions for slaves in McDonogh | 53 80 | |
| | Jos. Heuison for cleaning privy corner of Custom House and Royal streets | 9 00 | |
| | Connelly for 6 mattresses for slaves | 9 00 | |
| | Wm. Egan for 6 cotts for slaves | 8 00 | |
| | Eugene Ory for taxes of the parish of St. James for 1850 | 24 63 | |
| | Jim Thornton for weekly allowance | 9 00 | |
| | mechanics and laborers of succession | 25 00 | |
| | J. B. Drones for State tax of 1850 in the 5th representative district | 289 49 | |

## PAYMENTS—Continued.

| | | | | |
|---|---|---|---|---|
| May 31 | Paid Orleans' Insurance Co. for insurance on sundry buildings of the succession, viz.: | | | |
| | In 1st municipal val'd .. | $62,500 | | |
| | 2d " " .. | 90,400 | | |
| | 3d " " .. | 43,500 | | |
| | McDonogh ..... | 13,600 | | |
| | | $210,000 | $2,413 75 | |
| | Deduct 10 p. c. all'd by the Comp. | | 240 47 | |
| | | | $2,173 28 | |
| | Less return prem. on $52,500 ... | | 279 18 | |
| | | | | $1,894 10 |
| | | | | $3,817 30 |
| June 11 | L. Petit on account of work on the buildings of the Fleitas place..... | | 400 00 | |
| | L. Choteau for half of fence between property of the estate of Dr. Viquettes, on St. Claude, near St. Philip street..... | | 14 50 | |
| | J. J. Gautier for cistern for house, corner Camp and Edward streets..... | | 30 00 | |
| | F. H. Schulder for repairs to house on Elysian Fields, between Levee and Victory streets... | | 60 | |
| 1851. | Amount forward..... | | 504 50 | 34,949 86 |
| June 11 | Michl. McGinness for filling up 3 lots on Religious street, between Market and St. James street..... | | 185 00 | |
| | Expenses to Fletas plan to examine repairs going on..... | | 9 00 | |
| | Postage on commissions to take inventories in different parishes..... | | 8 00 | |
| 9 | J. M. Johnston & Co. for groceries, &c., for places in McDonough..... | | 95 67 | |
| | M. Barnett, jr., for taxes in parish of East Baton Rouge for 1850..... | | 97 50 | |
| 14 | J. W. Duky for services as superintendent, and for provisions for the slaves in McD..... | | 48 00 | |
| | N. Jarvis & Co. for L. oil for buildings..... | | 3 50 | |
| | mechanics and laborers of the succession..... | | 17 00 | |
| | B. Perret, on account of services, taking care of the property of the succession, and as porter of the executors..... | | 25 00 | |
| | D. L. Holliday & Co. for corn for mules..... | | 9 55 | |
| | Magee & Kneass for harness for do..... | | 16 75 | |
| | for soap, matches, lime, &c..... | | 2 15 | |
| 21 | "Orleanean" for advertising notice to debtors and creditors of the succession..... | | 20 00 | |
| 28 | Jim Thornton for weekly allowance..... | | 6 00 | |
| | Huffty for a brush for office..... | | 75 | |
| | Jas. Brown for oil, brooms, lime, &c..... | | 1 50 | |
| 30 | A. Mazareau for protesting note of Mrs. Lusson, and for copy of lease to Paturzo, Legay & Co. | | 5 50 | |
| | J. P. McDonald for brogans for slaves..... | | 15 00 | |
| 1851. | Amount forward..... | | 1,070 19 | 34,949 86 |
| June 30 | for ferriage, &c..... | | 1 85 | |
| | C. W. Duky for services as superintendent, and for provisions for slaves in McDonough..... | | 54 25 | |
| | mechanics and laborers of the estate..... | | 17 00 | |

## PAYMENTS—Continued.

| | | | | |
|---|---|---|---|---|
| | | W. A. Holt, clerk, for services | $100 00 | $1,243 29 |
| July | 5 | Paid Jno. Johnston & Co. for groceries, &c., for place in McDonough | 47 35 | |
| | | N. C. Folger for clothing for slaves in McDonough | 230 50 | |
| | | Crescent for printing 100 copies of will of testator in pamphlets | 36 00 | |
| | | Marshal & James for prints, &c., for clothing for black women of the estate in McDonough | 42 85 | |
| | | W. H. Filkins for lumber, flooring, &c., for sundry buildings | 374 88 | |
| | 8 | Louis Petet for work on buildings on the Fleitas place | 515 00 | |
| | | B. Cohen for clothing for Jim Thornton | 6 00 | |
| | | E. N. Martin rec'r for inventory of the property of the succession in the parish of St. Landry | 10 00 | |
| | 15 | B. Perret on account, taking care of property and as porter of executors | 30 00 | |
| | | C. W. Duky for services as superintendent, and for provisions furnished the slaves in McDonough | 54 00 | |
| | 18 | N. C. White for slating house in Dauphin street, between St. Ann and Dumain street | 6 50 | |
| 1851. | | Amount forward | 1,353 08 | 36,193 15 |
| July | 21 | C. W. Duky in full for services as superintendent in McDonough to 31st July | 25 00 | |
| | | Auvignan Dorville, agent of the widow and heirs of F. H. de St. Geme, on account of a note of the testator for $13,250, due 22d instant | 4,000 00 | |
| | 22 | F. D. Gott on account of contract for repairs to Orleans theatre | 150 00 | |
| | 31 | branch of the Louisiana State Bank for protest on 6th January, of Hoey & Collin's notes | 5 50 | |
| | | W. A. Holt, clerk, for services | 100 00 | 5,633 58 |
| Aug. | 9 | Peter Butler for repairing pipes and doors of Western Exchange | 5 06 | |
| | | Jim Thornton for weekly allowance | 9 00 | |
| | | mechanics and laborers do. do | 48 00 | |
| | | washing, towels, &c | 7 35 | |
| | 12 | P. Kleinkamp & Co. for bread for place in McDonogh | 15 00 | |
| | | B. Perret, on account for services, taking care of property, and as porter of the executors | 30 00 | |
| | | Sheriff's fees in suits of testator vs. Wm. Pontalba and S. Stewart, in 3d district court | 7 50 | |
| | | J. Coulon for a water jar | 3 00 | |
| | | Dr. H. Kennedy for medicines for slaves in McDonogh | 26 43 | |
| 1851. | | Amount forward | 151 34 | 41,826 73 |
| Aug. | 30 | Paid Jno. Lindsey for 1 month's salary, to 1st, as carpenter and superintendent of mechanics and laborers | 80 00 | |
| | | Jno. Johnston & Co. for groceries, &c., for place in McDonogh | 106 06 | |
| | | Priestly & Bein for hardware for sundry buildings | 80 16 | |

## PAYMENTS—Continued.

| | | | | | |
|---|---|---|---|---|---|
| 13 | Paid Insurance on Orleans Theatre— | | | | |
| | To Gen. Mutual Ins. Co., on $10,000.. | | $200 | | |
| | Merchants' Ins. Co., 10,000.. | | 200 | | |
| | N. Orleans Ins. Co., 10,000.. | | 200 | | |
| | | | 600 | | |
| | Less 10 per cent. deducted by cash.... | | 60 | | |
| | | | | $540 00 | |
| | Amount of reward offered for the securing of lost bonds of municipality No. 1, this day handed to the executors..... | | | 1,000 00 | |
| 14 | Thos. Gegan for repairing copper gutter on corner Custom-house and Royal streets ..... | | | 3 50 | |
| | Clerk of 2d district court, his fees in suit, Testator vs. R. Chinn..... | | | 13 85 | |
| | Municipality No. 1 for taxes, viz: | | | | |
| | Special tax for 1849 ..... | $808 66 | | | |
| | Additional do. 1851 ..... | 606 50 | | | |
| | City do. 1850 ..... | 2,753 62 | | | |
| | | | | 4,168 78 | |
| | Henry Leamont for 2 notes, each $105, of the testator, dated 25th April, 1849, at 18 months and 2 years' date, issued for property of Chalen, bought at the sheriff's sale..... | $210 00 | | | |
| | Interest on 1st $2 06, on 2d $5 88, to 7th July..... | | 7 94 | | |
| | | | | 217 94 | |
| | | | | 6,361 63 | $41,826 73 |
| 1851. | Amount forward..... | | | 6,361 63 | 41,826 73 |
| Aug. 16 | L. Delery, collector, for taxes of parish of Jefferson, for 1850, on property of succession, viz: | | | | |
| | In Hurstville—parish.... | $21 60 | | | |
| | special... | 28 80 | | | |
| | | | 50 40 | | |
| | In Shrewsbury—parish.. | 1 50 | | | |
| | special.. | 2 00 | | | |
| | | | 3 50 | | |
| | In Harlem—parish..... | 5 70 | | | |
| | special ..... | 7 60 | | | |
| | | | 13 30 | | |
| | Bath, parish ..... | | 1 04 | | |
| | Metarie Ridge, do. ..... | | 3 00 | | |
| | Mechanickham, do. ..... | | 93 | | |
| | McDonogh, do. ..... | | 91 64 | | |
| | On right bank, do. ..... | | 75 97 | | |
| | On Barataria, do. ..... | | 58 87 | | |
| | | | | 298 65 | |
| | F. D. Gott for balance due for repairs to Orleans Theatre, per contract..... | | | 450 00 | |
| | B. Cohen for clothing for Jim Thornton ..... | | | 5 50 | |
| | L. Petit for balance due for repairs to buildings on the Fleitas place..... | | | 21 00 | |
| | 1st municipality police jail, fees of slaves Helick, Henry, and Brown..... | | | 5 10 | |
| | H. Petit, recorder, for making inventory of the properties of succession in parish of Iberville. | | | 32 00 | |

## PAYMENTS—Continued.

| | | | | |
|---|---|---|---|---|
| | Paid P. Ravel, recorder, for making inventory of the property of the succession in the parish of Livingston | | $30 00 | |
| 1851. | Amount forward | | 7,203 88 | $41,826 73 |
| Aug. 16 | Paid for carriage hire of the executors to the Fleitas place to examine the repairs | | 10 00 | |
| | P. A. Boufort, attorney of S. McCutcheon, amount of 2 notes of the testator, issued for property bought at sale of estate of N. Destrehan— | | | |
| | 1 dated 24th Nov., '48, protested 23d Nov., '50 | $800 00 | | |
| | 1 dated 24th March, '49, 2 years' protest, 27th March, '51 | 93 77½ | | |
| | | 893 77½ | | |
| | protests, $2½ each | 5 00 | | |
| | interest a 5 p. cent. to 7th Aug., on 1st $28 33, on 2d $1 70 | 30 03 | | |
| | | | 35 03 | |
| | fees, clerk, 3d dist. court | 7 50 | | |
| | sheriff, parish of Jefferson | 3 40 | | |
| | | | 10 90 | |
| | cost of copies | | 8 00 | |
| | | | 947 71 | |
| 18 | D. L. Holliday & Co., for corn for mules | | 9 80 | |
| 20 | D. Maupay, for garden seeds | | 7 05 | |
| 23 | L. Casten, jr., for State taxes for 1850, in 6th rep've district | | 142 68 | |
| | L. Casten, jr., for making application for changes in asst. roll and list of properties | | 20 00 | |
| | E. Wilson, collector for parish tax for 1850, in parish of Orleans, right bank of Mississippi | | 57 42 | |
| 30 | for soap, brooms, matches, extracting teeth, blacking, &c | | 3 30 | |
| | mechanics and laborers of the estate, for 3 weeks | | 21 00 | |
| | W. A. Holt, clerk, for services | | 150 00 | |
| | Amount forward | | 8,572 84 | 41,826 73 |
| 1851. | | | | |
| Aug. 30 | Paid A. Rousselen, for services as superintendent, and for provisions furnished slaves in McDonogh, 1½ months | | 105 20 | |
| | James Lindsay, for 1 month's salary as carpenter and superintendent of mechanics and laborers. | | 100 00 | 8,778 04 |
| Sept. 4 | True Delta, for advertising Western Exchange for rents | | 4 00 | |
| | tax on suit for Rent vs. John Hover and James Clark | | 4 00 | |
| | A. G. Blanchard, for surveying lots, corner of St. Peter and Julia, and on St. Peter, near Gravier street | | 12 20 | |
| 6 | William H. Filkins, for lumber for sundry buildings | | 104 89 | |
| | Day, Klein & Co., for the same | | 86 92 | |
| | Dr. Smith, for 1 quarter salary to 28th August, as physician for slaves in McDonogh | | 50 00 | |

## PAYMENTS—Continued.

| | | | | |
|---|---|---|---|---|
| Aug. 6 | Paid J. P. McDonald, for brogans for slaves in McDonogh | | $40 00 | |
| | John Johnston & Co., for groceries and provisions for the same | | 49 54 | |
| | N. O. Bee, for advertising lost bonds of 1st municipality since Nov. 5, 6 sqrs, 167 times | $252 00 | 252 00 | |
| | Notice relative to lease, English and French, since 5th Nov., 1 square 260 times | $130 50 | | |
| | Notice to debtors and creditors, in English and French, since 16th January, 1 square 204 times | 102 50 | 233 00 | |
| 1851. | Amount forward | | 836 55 | $50,604 77 |
| Sept. 6 | W. H. Waters for papering, painting, and glazing the Western Exchange | | 278 00 | |
| | E. Wilson, collector for parish tax for 1850, of parish of Orleans, on right bank, omitted in first settlement | | 20 53 | |
| | P. R. Kleinkempt & Co. for bread for slaves in McDonogh | | 32 80 | |
| 16 | R. A. Joiner for cypress and pine lumber for repairs to buildings | | 173 20 | |
| 19 | Adolph Mazureau and Thomas Layton on account of making inventory of the succession | | 3,000 00 | |
| | A. McPherson, treasurer of Orphan Boys' Asylum, for a note of the testator, dated 9th Sept., 1850, at 1 year's date, issued for purchase of property in Milenburg | | 129 28 | |
| | Michen & Senat for a note of the testator of same tenor as above, issued for properties in Milenburg, protested 12th instant, for $75 59, and protest $2 50 | | 79 09 | |
| | James M. Fergay for paving the alley way on Commerce street, between Poydras and Lafayette streets | | 511 10 | |
| 9 | D. L. Holliday & Co. for corn for mules | | 13 95 | |
| 13 | John O'Kief for filling up lot on front levee, between Gaienne and Suzette streets | | 53 35 | |
| 1851. | To amount forward | | 5,124 85 | 50,604 77 |
| Sept. 15 | P. Perret on account of services, taking care of properties, and as porter of the executors | | 30 00 | |
| 20 | Miller & Dino for piling lumber on lot in Philippa street | | 11 00 | |
| 30 | C. A. Rousselin for services as superintendent, and for provisions for slaves in McDonogh | | 68 50 | |
| | Jos. Harrison for cleaning privies of Western Exchange, and No. 95 St. Ann street | | 19 00 | |
| | midwife for slave Fanny | | 10 00 | |
| | N. C. White for slating sundry buildings | | 95 00 | |
| | J. P. McDonald for shoes for slaves | | 9 75 | |
| | Flanagan for sashes for buildings | | 14 00 | |
| | for tel. despatch in relation to lost bonds of 1st municipality | | 5 00 | |
| | D. L. Holliday for oats and bran | | 4 56 | |
| | mechanics and laborers of the estate for weekly allowance, 4 weeks | | 27 50 | |
| | Jas. Thornton for do., 5 do | | 7 50 | |

PAYMENTS—Continued.

| | | | |
|---|---|---|---|
| | Paid for ferriage, omnibus, postage, extracting teeth, &c. | $4 11 | |
| | Jno. Johnson & Co. for groceries and provisions for slaves in McDonogh | 87 44 | |
| | P. Kleinkemp & Co. for bread for the same for this month | 36 00 | |
| | Howes & Bennett for locks, hinges, &c., for sundry buildings | 56 70 | |
| | Water works dep't for pipes and fixtures for store corner New Levee and the alley | 39 55 | |
| 1851. | To amount forward | 5,650 46 | $50,604 77 |
| Sept. 30 | James Lindsey, for one month's salary as carpenter and superintendent of mechanics and laborers | 100 00 | |
| | Wm. A. Holt, clerk, for services | 150 00 | |
| | | | 5,900 46 |
| Oct. 3 | A. Mazureau and Thomas Layton, on account of professional services in making inventory of succession | 3,000 00 | |
| | Capt. Yourres, of 1st municipality police, for expenses and services in relation to bonds stolen from the succession | 100 00 | |
| 4 | H. T. Sherman for lumber | 18 54 | |
| 11 | Jno. Pemberton the amount of testator's note, issued for lands in Alabama, due 19th March $110 00 with int. since at 8 per cent., 206 days 5 04 | 115 04 | |
| | W. H. Waters for painting and glazing sundry buildings | 69 45 | |
| | W. H. Brown for cypress sills for coffee house in the rear of the Orleans Theatre | 3 99 | |
| | Dr. Mahoney for medical attendance to infant slave Jim | 5 00 | |
| | U. S. marshal's fees in sundry land suits of the testator vs. the United States | 14 00 | |
| | | | 3,326 02 |
| | Total of payments.....dollars | | 59,831 25 |

NEW ORLEANS, *October* 27, 1851.

## RECAPITULATION.

| | | |
|---|---|---|
| Amount of receipts, per page 7 | | $87,983 73 |
| Amount of payments, per page 32 | | 59,831 25 |
| Balance on hand, twenty-eight thousand one hundred and fifty-two dollars and forty-eight cents remaining in the Branch of the Louisiana State Bank on interest | | 28.152 48 |
| Amount of inventory in the parish of Orleans. Less bad debts, old bills receivable, &c. | $1,979,116 72 | |
| Amount of rents, &c., collected since the inventory was closed, exclusive of the rent notes, coupons, &c., inventoried | 13,641 73 | |
| | 1,992,758 45 | |
| Amount of inventory in parish of Jefferson | $339,630 00 | |
| Do. do. Iberville | 55,943 50 | |
| Do. do. E. B. Rouge | 31 500 00 | |
| Do. do. Livingston | 10,432 50 | |
| Do. do. Assumption | 7,500 00 | |
| Do. do. St. Landry | 500 00 | |
| Do. do. St. Tammany | 400 00 | |
| Do. do. St. Bernard | 1,283 00 | |
| Do. do. Plaquemines | 54,000 00 (about) | |
| | 501,189 00 | |
| Executors' commission, 2½ per cent., on | 2,493,947 15 | 62,348 70 |
| To be divided between the following named executors, to wit: | | |
| A. D. Crossman | 12,469 74 | |
| C. Roselius | 12,469 74 | |
| F. B. D'Aquin | 12,469 74 | |
| William E. Leverich | 12,469 74 | |
| John Spear Smith | 12,469 74 | |
| | | 62,348 70 |

New Orleans, 27th October, 1851.

## BILLS PAYABLE

*Issued by the Testator, and still unpaid.*

| HOLDERS. | FOR WHAT PROPERTY ISSUED. | AMOUNT. | WHEN DUE. | REMARKS. |
|---|---|---|---|---|
| | | | M'hs D'ys Y'rs. | |
| | Destrehan | $2,400 00 | Nov. 23, '50 | |
| | Do. | 800 00 | " 23, '50 | |
| | Do. | 800 00 | " 23, '50 | |
| | Harvey | 3,692 00 | " 23, '50 | |
| | 3d municipality | 459 50 | Jan'y 8, '51 | |
| E. Boisblanc | Barrataria | 716 66⅔ | Feb. 28, '51 | |
| | Chalon | 606 75 | March 11, '51 | |
| | Destrehan | 93 77¼ | " 27, '51 | |
| | Destrehan | 93 77¼ | " 27, '51 | |
| | Do. | 281 33¾ | " 27, '51 | |
| | Barrataria | 606 66⅔ | July 16, '51 | |
| A. Miltenberger | Marigny | 1,250 00 | " 21, '52 | |
| | Destrehan | 2,400 00 | Nov. 23, '52 | |
| | Do. | 800 00 | " 23, '51 | |
| | Do. | 800 00 | " 23, '51 | |
| | Do. | 800 00 | " 23, '51 | |
| | Harvey | 3,796 00 | " 23, '51 | |
| A. Dorville, ag't of widow and heirs of St. Geme | St. Geme— due 22d July, '51 $13,250 less p'd on ac't 4,000 | 9,250 00 | Jan'y 1, '52 | With 8 p. c. int. |
| Union Bank | Orleans theatre | 50,000 00 | " 4, '52 | |
| | 3d municipality | 459 50 | " 8, '52 | |
| | Destrehan | 93 77⅔ | March 27, '52 | |
| | Do. | 93 77⅔ | " 27, '52 | |
| | Do. | 93 77⅔ | " 27, '52 | |
| | Do. | 281 33¼ | " 27, '52 | |
| | Barrataria | 716 66⅔ | Feb. 28, '52 | |
| | Forward | $81,385 30¼ | | |
| | Barrataria | 606 66⅔ | July 16, '52 | |
| | St. Geme | 13,250 00 | " 22, '52 | |
| | Milenburg | 129 29 | Sept. 12, '52 | |
| | Do. | 73 59 | " 12, '52 | |
| | St. Geme | 13,250 00 | July 22, '53 | |
| | Milenburg | 129 28 | Sept. 12, '53 | |
| | Do | 73 59 | " 12, '53 | |
| Union Bank | Union Bank | 7,000 00 | March 12, '54 | With 7 per ct. int. fm. Mar. 9, 1849. |
| | Milenburg | 129 28 | Sept. 12, '54 | |
| | Do. | 73 59 | " 12, '54 | |
| | Do. | 129 28 | " 12, '55 | |
| | Do. | 73 59 | " 12, '55 | |
| | | $116,303 45¼ | | |

*Claims presented against the estate.*

| | | |
|---|---|---|
| 1 | Adolphe Mazureau and Thomas Layton—For professional services rendered in making the inventory of the succession in the parish of Orleans..... | $12,000 00 |
| | Allowed to the amount of $600 and not allowed for the balance. | |
| 2 | Henry W. Palfrey—For services rendered as appraiser of the property of the succession in the parish of Orleans—not allowed..... | 2,500 00 |
| 3 | G. Rursheedt—For services rendered as appraiser of the property of the succession in the parish of Orleans—not allowed..... | 2,500 00 |
| 4 | Giovany Polessi—For making banquettes in front of the property of the succession, before the death of the testator, on the north east side of St. Phillippe street, between Miro and Galvez streets, allowed..... $330 28 | |
| | Southwest side of Ursuline street between Miro and Galvez streets, not allowed..... 723 84 | 1,054 12 |
| | Amount forward..... | 18,054 12 |
| 5 | H. Touchmelon—For one-half of fence, corner of St. Bernard and St. John the Baptist street, in the third municipality, made before the death of the testator..... | 10 50 |
| 6 | Dr. J. Beugnot—For professional services to slave John Kenny, in May, 1848..... | 75 00 |
| 7 | Sheriff of the parish of Orleans—For amount of purchase by the testator of the hot-house plants, &c., at the corner of Camp and Edward streets, retained by him on account of a claim for rent of said premises..... | 241 00 |
| 8 | Municipality No. 2—For paving side-walks,&c., in front of property of the succession at NW. corner of Vine street and Florida landing—not allowed..... | 168 00 |
| 9 | J. R. Borgsted—For making inventory of the property of the succession in the parish of Jefferson—not allowed..... | 300 00 |
| | Amount forward..... | 18,848 62 |
| 10 | John M. Bach—For services rendered as appraiser of the property of the succession in the parish of Jefferson—not allowed..... | 600 00 |
| 11 | L. Bouligny—For services rendered as appraiser of the property of the succession in the parish of Jefferson—not allowed..... | 600 00 |
| 12 | Dr. James Jones—For professional services rendered, $250 allowed, $250 not allowed..... | 500 00 |
| 13 | R. Ducros—For making inventory of the property of the succession in the parish of St. Bernard—not allowed..... | 75 00 |
| 14 | A. LeBlanc—For making inventory of the property of the succession in the parish of Assumption—not allowed..... | 44 00 |
| 15 | Parish of Jefferson—For special tax on the property of the succession in the parish of Jefferson—not allowed—2,800 to..... | 2,900 00 |
| | Amount forward..... | 23,567 62 |
| 16 | Clerk of the 5th district court—For bill of costs..... | 155 90 |
| 17 | Sheriff of the parish of Orleans—For bill of costs..... | |
| 18 | Maurice Grivot, an attorney of executors—For professional services rendered and to be rendered..... | 5,000 00 |
| 19 | State of Louisiana—For State taxes for 1850, about..... | 260 00 |
| 20 | Levi Peirce, attorney of executors—For a conditional claim for a fee in case the two suits, one brought by the States of Louisiana and Maryland, and the other by the alleged legal heirs of the testator, shall both be decided in favor of the executors and the will maintained..... | 10,000 00 |

New Orleans, 27th October, 1851.

(Signed) WM. E. LEVERICH,
(Signed) F. B. D'AQUIN,
(Signed) C. ROSELIUS,
(Signed) A. D. CROSSMAN.

Fifth district court of New Orleans. A true copy.
Clerk's office, New Orleans, 8th November, 1851.

[SEAL.] JOHN J. BAREN,
*Deputy clerk.*

Endorsed as follows: "1981, U. S. C. court;" "copy of executor's account and petition;" "G, offered and filed by complainants, 13th April, 1852."

J. W. GURLEY,
*Clerk.*

*Document "H," offered by complainants on trial, 14th April, 1852—Slips from newspapers.*

The Daily Picayune.—The McDonogh estate.

The following are the passages in the late message of Gov. Lowe to the legislature of Maryland, in which he treats of the interests of Baltimore, and of Maryland, *in which he treats of the interests of Baltimore, and of Maryland*, under the will, and the action taken by the State authorities:

Immediately after my entrance into office my attention was attracted to an important matter, in which the city of Baltimore and the State of Maryland are deeply interested. You are aware that the late John McDonogh, of New Orleans, in the State of Louisiana, died possessed of an immense estate, the great bulk of which he bequeathed to the cities of Baltimore and New Orleans for charitable and educational purposes. The provision made by him for his heirs at law was proportionably insignificant. From a correspondence which had recently been opened between this department and one of the counsel for absent heirs, appointed by the fifth district court of New Orleans, and from other sources, I learned that the heirs at law had manifested a determination to assail the will of McDonogh upon the broad principles that the conditions and limitations annexed to the bequest were not only impracticable in themselves, but were in direct contravention of public policy. It is necessary here to enter more fully into the details of the will, upon which the opinion of its validity were predicated.

I was notified that the State of Louisiana, looking to and anticipating the threatened action of the heirs at law, had taken initiative proceedings in her State courts, which thereby had obtained complete jurisdiction of the case, to the exclusion of the Federal tribunals, into which the expected suit of the heirs would have carried her had it been first instituted. The importance of this movement on the part of Louisiana was evident. Had the case been entered in the United States courts, no one could have foreseen the period of its termination, nor the cost of its prosecution. Moreover, the jurisprudence of Louisiana being mainly derived from the civil law, and resting principally upon Roman, French, and Spanish authorities, and the decisions of her supreme court, her judiciary was the proper tribunal before which to try the issues involved in the case. The interest of Louisiana and

Maryland is contingent only under the will of McDonogh. If the legacies to Baltimore and New Orleans should lapse from any cause, then it is provided in the will that Maryland and Louisiana shall, as residuary legatees, severally take them, to be held in trust for the purposes contemplated by the testator in the bequest to the cities.

After a careful consideration of the will, and in view of the opinions of able counsel, upon which the State of Louisiana had already acted, I felt justified in entertaining doubts as to the capacity of the cities to take the legacies for the causes heretofore assigned. Altho' I had not formed a settled opinion, nevertheless I considered that even a reasonable doubt imperatively called for my immediate action in the premises, the legislature not being then in session, to whose superior wisdom the matter could be referred, I regarded the intervention of the claims of Maryland as necessary to insure, absolutely, the protection of the estate against the suit of the heirs at law. If the cities which are the first legatees can take at all, it must be by the strength of their own title upon the face of the will. It must be because the conditions and limitations are practicable and not in violation of public policy. It is therefore utterly immaterial, so far as their chance of success is concerned, who else may be a party claimant on the record.

If McDonogh had created no residuary legatees, and had left no heirs at law, the invalidity of the will might simply have worked an escheat to the State of Louisiana. Therefore, the appearance of Maryland and Louisiana as litigants can in no wise prejudice the rights or interests of the cities, between which and the heirs at law the real issue now exists, even though the State should ultimately be successful. As the objections (if sustained,) which apply to the right of the cities to take the legacies cannot be extended to the States, and as the States are next in interest to the cities under the will, it follows that the heirs at law, if successful as against the cities, must then encounter the still more formidable claims of the States. Now the very simple deduction from these several premises is, would it not have been folly to have suffered the States to stand aside and trust the vast property involved in this controversy to a single issue between the cities and the heirs? I thought so, and accordingly I resolved to make Maryland a party to the proceedings instituted by Louisiana. For that purpose I employed Messrs. Elmore & King, two distinguished lawyers, resident in New Orleans, who were already associated with the attorney general of Louisiana as of counsel for that State in the same cause. I will take this occasion to say, that my reason for employing counsel resident at New Orleans was that the case might be promptly, uninterruptedly, and economically attended to. In the letter of instructions, bearing date the 21st of January, 1851, addressed by the secretary of State, under my directions, to Messrs. Elmore & King, they are expressly advised of the policy above set forth, and instructed as to the reasons which have placed Maryland on the record. They are also notified that the question of compensation for their professional services would be submitted to your action, and that the Executive would not assume authority to enter into any con-

tract relative thereto. They have very generously and confidingly consented to abide by your decision. Article second, section twenty-first, of the present constitution, makes it necessary that services of counsel employed by the Governor shall have been performed before the legislature can allow compensation. This case not having yet been determined by the supreme court of Louisiana, before which it has been carried, no appropriation for that purpose is now asked for. I however recommend the passage of a resolution ratifying the appointment of the counsel employed by me, and giving the sanction of the State in a more complete and formal manner, to the proceedings heretofore taken by my authority. This precaution is important upon legal grounds, which it is not advisable here to enumerate.

*The letter of the Attorney General of (Louisiana.)*

The attorney general of this State has made the following report to the Governor, on the progress made in the suit of the State against the executors of the will of John McDonogh.

His excellency, JOSEPH WALKER:

SIR: In accordance with my promise, and your excellency's request, I submit the following account of the suit of the State of Louisiana vs. the Executors of the late John McDonogh:

Shortly after the will of the deceased was admitted to probate, to wit, on the 28th of October, 1850, my attention was called to the provisions it contained in favor of the State of Louisiana. Owing to the large amount of property involved, and the real or supposed difficulty of the legal questions growing out of the extraordinary character of the will, I felt justified in calling to my assistance, as associate counsel, Messrs. William A. Elmore, W. W. King, and Miles Taylor. After a careful examination of the provisions of the will, the conclusion was, that the legacies in favor of the cities of New Orleans and Baltimore were null and void, and that the States of Louisiana and Maryland were entitled to the property, in conformity to law and the clearly expressed intentions of the testator.

With these views of the will, I deemed it my imperative duty, under the act of 1850, as well as under previous acts of the legislature, regulating the acts of the attorney general, to institute proceedings, in behalf of the State of Louisiana, for the property of the succession. Suit was accordingly commenced; and, as a conservative measure, the property was sequestered in the hands of the sheriff of Orleans. The State of Maryland intervened, and joined the State of Louisiana in the suit; and as soon as the case could be prepared, it was tried in the district court, and the judgment was adverse to the States.

From this decision I appealed, as did also the State of Maryland, and the case is now pending in the supreme court; if it be deemed advisable, the trial can be forced some time in the ensuing spring. As the case is one of great importance to the State, a brief statement of

its nature, and of the questions connected with it, may probably be expected from me. For a thorough exposition of the points and principles of the case I beg leave to refer your excellency to the printed arguments of counsel for the States, copies of which are herewith transmitted. I will, however, without trespassing I hope, give you a brief sketch of the prominent features of the controversy. The legacies to the cities are attacked mainly upon two grounds:

1. On account of the perpetuities created by them, and the exclusion from commerce of the property of the succession forever.

2. Because the legacies are made to persons and corporations having no capacity to accept them.

If the first ground be well taken, it is confidently believed that the legacies are reprobated both by law and public policy, and consequently are absolutely null; in that case, they never had any effect, except to vest the property in the States immediately upon the death of the testator. If the second position be well taken, it is equally clear, as it appears to me, under our law, that the legacies fall, C. C., 1478; for it is a positive rule of law that, to constitute a valid legacy, the legatee must be in existence at the death of the testator, and possess the capacity to accept; C. C., 1459. Even, therefore, if the cities of New Orleans and Baltimore were the undisputed beneficiary legatees under the will, it is believed they have not the capacity, in virtue of their present charters, to accept the legacies.

But it is evident the testator never intended those corporations to be benefitted by his will; on the contrary, he emphatically forbids one dollar of his money going into the coffers of the cities.

The testator intended that the various charitable institutions named in his will should be his real beneficiaries; provided those institutions could be founded as he desired, and administered according to his directions. In this state of things he wished the cities to act as supervisors of those institutions and of his property. But if those institutions could not be founded as desired, nor administered as directed, on account of legal obstacles, and those opposed by public policy, then it is very clear that the testator did not wish the cities to have any thing to do with his property, and willed it unconditionally to the States. Now, it is not pretended that the principal legatees of the real beneficiaries under the will are in existence, or have the capacity to accept; and such as are in existence cannot take, because the bequests to them are so connected and interwoven with *with* the others, that they cannot take unless the others can.

It has, however, been supposed that these incapacities of the nominal legatees, to wit, the cities of New Orleans and Baltimore, and of the real beneficiary legatees, to wit, the various charitable institutions as contemplated, might be removed and remedied by legislation. But it appears to me there are very grave, if not insuperable, objections to any legislation intending to remedy the fatal defects of the will, or to legalize that which is illegal. It is a well settled maxim in our jurisprudence, that the title to property is never in abeyance; that immediately upon

the death of a testator, his property vests somewhere. If the whole of his will be void, the property vests in the legal heirs. If there be a valid residuary legacy, and a special legacy be void, the special legacy vests in the residuary legatee. Upon the death of Mr. McDonogh his property was either vested in the cities and charitable institutions, or in the States under the residuary clause in their favor, or in the legal heirs. Any legislation, having for its object the divestiture of rights already vested, would *would* be in violation both of the Federal and State constitutions. The State may divest by legislation her own right, for she cannot be forced to take property against her will; but she cannot impair the rights of other parties. The rights of all parties were fixed at the moment of McDonogh's death. If the legacy to the cities was void, then it is not in the power of the legislature to impart validity to it. If the legac*ies* to the cities and charitable institutions was void at the death of the testator, because it attempted to create perpetuities by illegal substitutions, and fidei commissa, no subsequent legislation can render it valid. If the legacy is void because the legatee did not exist, or is incapable of accepting, the same consequence must follow. If the property in consequence of the nullity of the legacy to the cities and charitable institutions vested, as I contend it did, in the States, they may indeed give it away, but cannot defeat by legislation the necessary legal effect of objections which existed to the legacy at the death of the testator. These principles appear too plain for controversy. But to pursue the inquiry further, let it be conceded that the State can, by some species of *ex post facto* legislation, render the legacies to the cities valid, then the question arises, whether or not it be expedient to interfere for that purpose.

I take it for granted your excellency perceives that without some legislation to create the necessary capacities to accept, the legacy to the cities and charitable institutions must fall; in which event the State must certainly recover the property. Such legislation on the part of the State would supply the adversary with power to defeat her rights, and be inconsistent and irreconcilable with the operation of her own pretensions to the property. Suppose, however, after such legislation shall have been adopted, the court should still decide that the legacies to the cities and charitable institutions were void, what would be the consequence? The answer is evident, the property would go to the legal heirs of McDonogh. That such would be the necessary result of this species of legislation, is the decided opinion of my associate counsel.

But suppose this danger entirely obviated, and that the legislature takes the subject up with the view of bestowing on the city of New Orleans the requisite capacity to accept the legacy, is it not apparent that such a function does not pertain to the political or municipal powers of the city? In its nature, it is essentially the function of a private or special corporation, and the *corporation* forbids the incorporation by the legislature of special corporations. That clause of our constitution will therefore become entirely nugatory, if the powers and rights

of special corporations can be superadded to our municipal corporations. This constitutional objection to the conferring of the proposed capacity seems to me to be insuperable. It applies with the greater force to the incorporation of the charitable institutions intended to be founded by the testator; and if it can be done in one instance, it may in another, until at length even banking privileges may be conferred on all municipal corporations. The constitution moreover declares, that "no corporation hereafter to be created shall ever endure for a longer term than twenty-five years, except those which are political or municipal." The charitable institutions, the incorporation of which the will intends, are to be of perpetual duration. To incorporate them for twenty-five years, if it were constitutional, would leave the property at the expiration of that term in abeyance; and, in all probability, renew with increased violence the litigation in relation to it.

But if the capacity could be given to the city to accept, for whom and in what manner should she accept? She cannot accept for the charitable institutions, because they are not, and, under the constitution, never can be, in existence; and to empower the city to accept for herself would be in direct opposition to the testator's express declarations. A law to this effect, instead of facilitating the execution of the testamentary dispositions of McDonogh, would in fact destroy them; and, to all intents and purposes, create and substitute a new will, in virtue of which the city could take the property in absolute ownership, in spite of the positive prohibitions and the most cherished desires of the testator.

In the event, however, that all obstacles to conferring the proposed capacity to accept are removed, the very serious question still remains: Is it expedient and wise for the State to pursue that course? It is a question exclusively of legislative discretion. Your excellency will see, by reference to the will, that the bequest to the States, by which they claim the property, is substantially, "if the legacy to the cities and charitable institutions cannot take effect from any cause whatever, then, and in that case, the testator wills his property to the States of Louisiana and Maryland, in order that the legislatures of these States respectively may carry my intentions, as expressed and set forth in this my last will and testament, into effect, as far and in the manner which will appear to them the most proper."

No sophistry, however ingenious, can torture this plain language, nor the intention it manifests, into a double or an equivocal interpretation. The testator exhibits a plan, devised by himself, which he conceived to be the most appropriate machinery for the administration of his general estate. One grand and indispensable element of that plan is the inalienability and perpetual increase of the testator's landed estate. This plan is an unit, from which he prohibits the slightest shadow of deviation under the pain of nullity. If his plan, with the machinery provided, is against law, opposed to public policy, or cannot take effect from any cause whatever, then he gives his estate to the States of Louisiana and Maryland, in order that his intentions, as ex-

pressed, may be carried into effect as far and in the manner which will appear to the legislatures of those States most proper.

If the testator had have intended to give his estate to the cities of New Orleans and Baltimore absolutely and without qualification, when it should appear that the cities and charitable institutions could not take the legacies bequeathed to them, upon the plan of administration devised by him, why did he not so declare himself, instead of giving his estate to Louisiana and Maryland in the form of language recited? The answer is, that, in the contingency stated, it was more prudent and reasonable to trust the liberality and wisdom of the sovereign power to carry out, in a practical sense, the benevolent designs of the testator, than to a municipal corporation.

If the States recover the property, they will take it as absolute owners, and may dispose of it at their own discretion; although, doubtless, it will be applied to purposes germain to the wishes of the testator.

On the other hand, if the cities get the property, it will probably require many years of expensive litigation before their powers over it can be determined; and, in the mean time, the uncertainty resting over the extent of their rights will paralyze in a great degree their efforts for any useful application of it. If, notwithstanding, the State decides to legislate for the benefit of the city of New Orleans, the only course, that would not be extremely hazardous, is to donate absolutely all her rights to the city. To this course then there exists, at this time, at least serious objections.

1. An absolute donation by the State to the city would have the effect of transferring the suit from the State courts to the United States circuit [court,] where *where* a suit is now pending by the legal heirs of McDonough against the city and the executors. The State is not, and cannot be made, a party to that suit. If the State gain the suit in the State court, she will at once enter upon the possession of the property; whereas, if the litigation is transferred to the United States courts, the property will probably be tied up in chancery for many years, and, at last, be decided by a tribunal but little familiar with our peculiar laws.

2. It is a maxim of common prudence first to get before you give. After the State has once acquired the property and reduced it to possession, she can, if she pleases, give it to the city in a form that may be deemed the most just and best calculated to promote practically the benevolent intentions of the testator. If she gives it now, the city will take with all the discretionary powers vested by the will in the State, and there is no certainty that the property would be applied to any charitable purpose. On the other hand, if the State regards it as a duty, and desires to gain the property, on the conviction that the interests of the State at large, and the wishes and intentions of the testator, will be more effectually consulted and conciliated thereby, her line of policy is plain. No law should be passed inconsistent with that desire and that sense of duty, but her chances of success should be left unprejudiced and unimpaired.

Provision should be made for the prosecution of the suit, and for the payment of such fees as the associate counsel may be considered entitled to; and a mode should be provided for the selection or appointment of commissioners or agents to take charge of the property, in the event of the success of the State, and to sell and administer as the legislature may direct. If this course is pursued, my *my* associate counsel and myself have all reasonable confidence of success.

I will further remark, that it was in my power to have forced the cause to trial during the month of November last, but it was not considered entirely respectful to the sovereign authority of the State to urge the courts to a final decision of so important a cause, especially as the meeting of the legislature, whose sovereign will it was proper to consult, was approaching and near at hand. And it was with this view, I presume, that your excellency has been pleased to call on me for the information I have endeavored, with such expedient suggestions as occurred to me, to lay before you.

In conclusion, I beg leave to add, that the fate of the case, so far as it relates to the rights and interests of the States, is with the legislature. The counsels of that enlightened body, in the matter, must control my official action; and if the result relieves me of a heavy responsibility, I shall have occasion to rejoice. With profound respect and esteem, your excellency's most obedient servant,

ISAAC JOHNSON,
*Attorney General.*

Endorsed: "H," offered by complainants on trial, 14th April, 1852.
J. W. GURLEY, *Clerk.*

*Testimony of A. D. Crossman, filed 19th April, 1852.*

STATE OF LOUISIANA,
*Fifth district court of New Orleans.*

STATE OF LOUISIANA
vs. } No. 4257.
TESTAMENTARY EXECUTORS OF JOHN MCDONOGH.

Testimony of A. D. Crossman, taken in open court 10th February, 1851.

A. D. Crossman, witness for defendants, sworn. He is mayor of this city, and one of the executors of McDonogh; witness has acted with reference to this succession as mayor for the Mayor, Aldermen, and Inhabitants of New Orleans; the city has appointed counsel to represent it in maintaining the will.

As mayor he has accepted the legacy for the Mayor, Aldermen, and Inhabitants of the city of New Orleans; he has seen all the commissioners appointed by the councils, and they have accepted.

*Cross examined.*

He has accepted the legacy as mayor for the Mayor, Aldermen,

1857.

&c.; he sent the papers to the attorneys appointed by the municipalities; as mayor, under resolutions of the councils, he has employed counsel; and also as mayor spoken to those gentlemen, the attorneys of the municipalities, to represent the city of New Orleans, irrespective of any resolution of the council; when the petition and citation, in this case were handed to him, he handed the petition and citation addressed to Mayor, Aldermen, and Inhabitants of New Orleans, to Messrs. Roselius and Preaux and al., and requested them to represent the interest of the Mayor, Aldermen, and Inhabitants of New Orleans; he did not obligate himself as mayor, or on behalf of the mayor [and] aldermen of New Orleans, to pay those gentlemen; there was nothing said about compensation; witness considers himself as mayor solely to employ counsel and bind the corporation on all occasions whenever the interest of the corporation requires it; the gentlemen were employed by him to protect the interest of the Mayor, Aldermen, and Inhabitants of New Orleans.

The foregoing cross examination is not offered by the attorney general on behalf of the State of Louisiana, but it is offered on the part of the State of Maryland. Witness states, that a similar resolution as the one now filed, and marked number 5, was passed by the councils of the three municipalities, and under said resolutions the gentlemen therein named were engaged.

*Document No.* 1, *filed* 10*th Feb.*, 1851.

Mayoralty of New Orleans, council of municipality No. one, sitting of Monday, 9th December, 1850.

Resolved, That this council accept the legacy made by the late John McDonogh to the Mayor, Aldermen, and Inhabitants of the city of New Orleans, in the name of municipality No. one, and within the legal meaning of said legacy.

(Signed) JH. GENOIS, *Recorder.*

Approved 11th December, 1850.

(Signed) A. D. CROSSMAN, *Mayor.*

A true copy: L. A. St. CERAN, *Clerk.*

*Document No.* 2, *filed* 10*th Feb.*, 1851.

Mayoralty of New Orleans, council of municipality No. two. No. 3061.

Resolved, That this council accept the legacy made by the late John McDonogh to the Mayor, Aldermen, and Inhabitants of New Orleans, in the name of municipality No. two, and within the legal meaning of said legacy.

Passed December 10, 1850.

(Signed) JAMES H. CALDWELL.

Approved 13th December, 1850.

(Signed) A. D. CROSSMAN, *Mayor.*

A true copy: L. A. St. CERAN, *Clerk.*

*Document No.* 3, *filed* 10*th Feb.*, 1851.

Mayoralty of New Orleans, council of municipality No. three. Extra sitting of Thursday, December 5, 1850.

Resolved, That this council accept the legacy made by the late John McDonogh to the Mayor, Aldermen, and Inhabitants of New Orleans, in the name of municipality No. three, and within the legal meaning of said legacy.

(Signed) P. SEUZENEAU, *Recorder.*

Approved 7th December, 1850.

(Signed) A. D. CROSSMAN, *Mayor.*

A true copy: L. A. ST. CERAN, *Clerk.*

*Document No.* 4, *filed* 10*th Feb.*, 1851.

Yearly amount appropriated for the expenses of the public education, 1850.

| | |
|---|---|
| Municipality No. one - - - - - | $55,000 |
| Teacher, house rent, &c. - - - - | |
| Municipality No. two - - - - - | 66,886 |
| Municipality No. three - - - - - | 18,000 |
| Total - - - - - - | $139,886 |

*Document C, filed* 11*th Feb.*, 1851.

Mayoralty of New Orleans, 10th February, 1851, council of municipality No. one, sitting of Monday, 13th January, 1851.

Mr. Jules Benit was declared duly elected commissioner of the general estate.

(Signed) JH. GENOIS, *Recorder.*

Approved 15th January, 1851.

(Signed) A. D. CROSSMAN, *Mayor.*

The following gentlemen were declared unanimously elected commissioners of the asylum:

1st ward, Mr. J. W. Zacharie; 2d ward, W. T. Thompson; 3d ward, J. M. Lapeyre; 4th ward, H. L. Peire; 5th ward, Victor Weltz; 6th ward, F. Correjolles; 7th ward, A. Robert.

(Signed) JH. GENOIS, *Recorder.*

Approved 15th January, 1851.

(Signed) A. D. CROSSMAN, *Mayor.*

Messrs. Eusebe, Bouny, and Gustave Le Gardier, were declared duly elected commissioners of the school fund.

(Signed) JH. GENOIS, *Recorder.*

Approved 15th January, 1851.

(Signed) A. D. CROSSMAN, *Mayor.*

1858.

I hereby certify the above to be true copies from the records in my office.

A. D. CROSSMAN, *Mayor.*

*Document D, filed 11th Feb.*, 1851.

Mayoralty of New Orleans, 10th February, 1851, council of municipality No. three, sitting of Friday, 10th January, 1851.

Mr. Philip Lacoste was elected commissioner of the general estate of the will of the late John McDonogh.

The following gentlemen were elected commissioners for the management of the asylum of the poor under the same will:

1st ward, Rev. C. W. Whitall; 2d ward, Chas. Lovenskiold, esq.; 3d ward, Henry Laurence, esq.; 4th ward, Louis Duvigneaud, esq.

(Signed) P. SEUZENEAU, *Recorder.*

Approved 15th January, 1851.

(Signed) A. D. CROSSMAN, *Mayor.*

Sitting of Monday, 20th Janury, 1851.

Messrs. Philip Guesnon and J. Ollier were elected commissioners for the administration of the free school fund of the estate of the late John McDonogh.

(Signed) P. SEUZENEAU, *Recorder.*

Approved 22d January, 1851.

(Signed) A. D. CROSSMAN, *Mayor.*

I hereby certify the above to be true copies from the records in my office.

A. D. CROSSMAN, *Mayor.*

*Document E.—Filed 11th February*, 1851.

Council of municipality No. two. Sitting of January 6th, 1851.

(Extract from the minutes.)

The council re-assembled, and agreeably to the provisions of the will of the late John McDonogh, and by virtue of a resolution passed on the 12th November last, proceeded to the election of "commissioner of the general estate" and "commissioners of the asylum." The following gentlemen, having received the unanimous vote, were declared duly elected, viz., commissioner of the general estate, J. M. W. Picton; commissioner of the asylum, 1st ward John M. Bell, 2d ward P. Conrey, jr., 3d ward John Leeds, 4th ward J. M. Hall, 5th ward J. B. Winston, 6th ward H. D. Richardson, 7th ward John O. Brien; McDonogh, Captain Salter.

I hereby certify the above to be a true and correct copy from the minutes of the sitting above written and extant in the archives.

[L. S.] In faith whereof I hereunto set my hand and affix the official seal, the eleventh day of February, A. D. 1851.

J. CALHOUN, *Sec'y.*

*Document F.—Filed 11th February*, 1851.

Council of municipality No. two. Sitting of January 13th, 1851.

"On motion of Mr. Yancey, the council proceeded to the election of two commissioners of the free school fund, agreeably to the provisions of the will of the late John McDonogh."

"J. W. Stanton and O. Carey, having received a majority of votes, were accordingly declared elected."

I hereby certify the above to be a true and correct copy of extracts from the minutes, and extant in the archives.

[L. S.] In faith whereof I grant these presents under my hand and official seal this eleventh day of February, A. D. 1851.

J. CALHOUN, *Sec'y.*

STATE OF LOUISIANA,

*Fifth district court of New Orleans.*

I hereby certify the foregoing testimony of A. D. Crossman, and documents marked respectively 1, 2, 3, and 4, and C, D, and E, and F, to be true and correct copies from the originals on file in the office of the clerk of the court, in the suit of "the State of Louisiana vs. the Testamentary Executors of John McDonogh," No. 4,257 of the records of this court.

[SEAL.] Clerk's office, New Orleans, this seventeenth day of April, A. D. 1852.

One word erased. Approved.

P. LE BLANC, *Clerk.*

This is to certify that the several foregoing resolutions passed by the councils of municipalities Nos. one, two, and three, under dates of 9th December, 10th December, 1850, 10th, 13th, 20th January, 1851, and 10th February, 1851, are true copies.

HENRY BIER, *Sec'y.*

Endorsed—"1,981. U. S. circuit court." "Filed 19th April, 1852."

"J. W. GURLEY, *Clerk.*"

"This is in evidence.

"BENJAMIN & MICOU,
"*Solicitors for complainant,*
"C. ROSELIUS,
"ROBERT PREAUX."

1859

And afterwards, to wit, on Thursday, the 29th April, A. D. 1852, this case was submitted to the court, and an entry thereof made in the minutes as follows:

MARY MURDOCH and als., heirs, &c., vs. EXECUTORS OF MCDONOGH and als. } 1981.

This cause was resumed, and after argument by John R. Grymes, esq., on part of the complainants, was submitted to the court and taken under advisement.

And afterwards, at a special session of the court, held on the 7th day of October, 1852, A. D. a decree was rendered in the case by the court and duly recorded in this minutes.

(For the said decree see pages 236 to 238 inclusive.)

*Petition for a rehearing, filed 11th October, 1852.*

To the honorable the circuit court of the United States, in and for the fifth circuit, sitting in equity.

The petition of the City of New Orleans, a municipal corporation established by law, and of Christian Roselius, A. D. Crossman, William E. Leverich, and François B. D'Aquin, testamentary executors of the last will and testament of the late John McDonogh, most respectfully represents:

That a certain decree has been rendered by this honorable court, in the case of Mary Murdoch et als., heirs of John McDonogh, vs. the Executors of McDonogh et al., by which nearly all the testamentary dispositions in said will contained, and especially the universal legacies in favor of the cities of New Orleans and Baltimore, have been annulled and set aside; that impressed with the strongest conviction that said decree is erroneous, and that the grounds on which it is based are untenable in law, and unsupported by the facts of the case, your petitioners most respectfully pray this honorable court to grant a rehearing; and they beg leave to state the grounds and cause on which they base this their application, viz:

I. This honorable court has determined that the cities of New Orleans and Baltimore are not the universal legatees of the testator, principally on the ground that the disposing clause in the will—"I give and bequeath," &c.—is rendered nugatory, or, in the language of the court, revoked by the subsequent declaration of the testator, that "his intention is not that any part of said general estate, or revenue from rents arising from said general estate, shall go into the hands of the corporations of said cities, but that they, the said corporations, shall for ever have a supervision over it."

In support of this view the court invokes the familiar rule—when the latter part of a will is inconsistent with a prior part, the latter part will prevail. There can be no doubt of the correctness *of the correctness* of this rule of interpretation, when applied to a case in which the incon-

sistency is clear and palpable, and when it is impossible to give effect to the whole will.

But the court will pardon us for insisting that the rule has no application to McDonogh's will, when the supposed inconsistency is only apparent, and not real. The first and great rule in the interpretation of wills, is to ascertain the intention of the testator—C. C., 1705. One of the corollaries of this rule is, that "a disposition must be understood in the sense in which it can have effect, rather than in that in which it can have none"—C. C. 1706. These rules have been dictated by the wisdom of ages, and have received the force of positive written law by being inserted in the Louisiana code. When they are applied to the two clauses in McDonogh's will, it appears to us impossible for the mind to come to the conclusion that the latter clause, just referred to, is so clearly contradictory of the former as to revoke or destroy it. In the first clause the intention of the testator is expressed, beyond the possibility of a doubt, to give and bequeath all his property, with the exception of the special legacies, to the cities of New Orleans and Baltimore, for certain educational and charitable purposes which he designates; and, as the court correctly observes, if this language stood unaffected by any subsequent inconsistent or qualifying clause, there could be no doubt in the mind of the court as to the true intent and meaning of the testator; the simple and only inquiry would be, is the legatee capable of receiving the legacy? What, then, is the intention and meaning of the testator in the second clause in the will, where he says, "that his intention is not that any part of said general estate, or revenues from rents arising from said general estate, shall go into the hands of the corporations of said cities, but that they, the said corporations, shall for ever have a supervision over it." To our minds it is too clear to admit of the shadow of a doubt, that this part of the will refers exclusively to the administration of the property bequeathed, and has no reference whatever to the disposition of its ownership. This is apparent from [the] context of the will. The testator first gives and bequeaths his property to the cities of New Orleans and Baltimore, for the accomplishment of certain educational and charitable objects; he then goes a step further, and lays down rules for the administration of the property given.

For this purpose he directed the creation of the "general estate," the appointment of commissioners and agents; in a word, he devises a complicated machinery of checks and balances, with a view the more effectually to secure the application of the munificent bequest to the objects designated. Having in the previous part of the will directed that the "general estate" should be managed by commissioners and agents to be appointed by the cities of New Orleans and Baltimore, to whom the title papers, &c., of the property were to be delivered, he proceeds in the clause under consideration to state that no part of the "general estate," i. e. the property bequeathed, nor any of the funds proceeding from the revenues thereof, shall go into the hands of said corporations.

The obvious meaning of this is, that the property and revenues of

the bequest shall not be mixed up with the other property and funds of the corporations, but shall be always kept separate and apart, to be managed and administered by the commissioners and agents to be appointed for that special purpose, and not by the ordinary officers of the corporations, who shall only exercise supervision over the acts of the commissioners and agents. How, then, we respectfully ask, can it be contended that this direction of the testator has transferred the legacy from the cities of New Orleans and Baltimore to the commissioners and agents appointed to be appointed by those cities for its administration, as to the general estate itself, which is the very thing bequeathed? It has been asked, why should the testator request the cities to petition the legislature for an act of incorporation of the commissioners and agents, if the property belonged to the municipal corporations already in existence? The answer to this question is plain and simple. He imagined that he had the right to control the administration of his property after his death, and to prevent its alienation forever. In order to carry out this design, he attempts to create the "general estate," and devises a special system for its administration, which is also to last forever; but one of the most remarkable features in this administrative machinery is the rotation of the commissioners and agents, and in order to obviate the confusion which might result from the frequent change of the individuals who were to carry on this complicated system, he considered it important to have the board of commissioners and agents incorporated. But it surely does not follow from these Utopian notions of the testator, as to the power which he could exercise after his death over the administration of the property he had bequeathed in express terms to the cities of New Orleans and Baltimore, that therefore he intended to transfer the bequests from the universal legatees to the natural or moral persons through whose instrumentality the property was to be administered. The power of administering the property of corporations does not imply a title to that property in the administrators; for, as a corporation is a mere legal entity, created by law, it can only administer its property through the agency of natural persons who individually have no title or ownership whatever in the property which they administer, although they may be members of the corporations. As regards natural persons, one of the attributes of ownership is the right to administer; but from the very nature of things, a legal or moral person cannot exercise that power in any other manner than through the agency of natural persons; so that the exercise of the power of administration and the title or ownership can never be united in the same person, so far as property belonging to corporations is concerned. Much stress is laid on the fact that the executors are directed to deliver the muniments of title to the commissioners and agents to be appointed, and that they are to have the custody of them; but it is evident that this circumstance does not keep the argument against the validity of the bequests in favor of the cities in the least. Whose agents are the commissioners? By whom are they appointed? Under whose supervision or control do they act? All these questions can

receive but one answer, they are the agents and representatives of the universal legatees, the cities of New Orleans and Baltimore.

Again, is it so very strange that a portion of the property should be administered by a special board of commissioners? Are the sinking funds not administered in the same manner? Did any one ever imagine that the money and other assets under the special control of the commissioners of the sinking fund does not belong to the city of New Orleans? And yet the city has only a power of supervision over the acts of the commissioners. It seems to be supposed that the supervision spoken of by the testator is to be assimilated to the visitorial power reserved to the founder of an educational or charitable institution under the common law. But it is respectfully submitted that there is not the remotest analogy between the two cases. The supervision to be exercised by the cities is the control of its own agents, or, in other words, the accountability of one set of agents of the corporation to another set of agents of the same corporation, just as the treasurer is bound to render an account at stated periods to the mayor and council, &c.

But there is another and conclusive answer to all the ingenious arguments drawn from the system of administration, and the prohibition to alienate, which the testator has attempted to impose on his universal legatees, and that is, that no part of their directions are obligatory on them. The law permits a person who has no forced heirs to dispose of the whole, or of a part, of the property which he may leave at his death by will, provided he has the capacity to give and the legatee to receive. But when the testator has done this, his power over his property after death is exhausted; he has no right whatever to direct how it is to be administered by the legatee, nor can he prohibit its alienation. The reason of this rule is obvious; for, in order to constitute property, there must be a person who is the subject, and a thing that is the object of the right of property. The right of administration is an incident of ownership; and a person can no more regulate the administration of the property which he bequeaths, than he can continue to be its owner after death. Hence the directions of the testator for the appointment of commissioners, the creation of the general estate, as well as the prohibition to alienate, are all impossible or illegal conditions, which the testator had no right to impose, and which the legatees are not bound to observe. Nay, more; inasmuch as the legatees are municipal corporations, whose property can only be held and administered according to their charter, they cannot obey the directions of the testator in this respect without an amendment of their charters; consequently, these conditions or directions must be reputed as not written, and can of course exercise no influence on the validity of the legacy in favor of the cities. Whether the testator would have made the bequest to the cities if he had known that the system of administration and accumulation which he had devised and attempted to impose on his legatees would be considered as not written, is a question which does not arise; for the law has declared in express terms, that whatever is contrary to law in

1861.

a will shall be considered as not written, without affecting in the least the validity of all the legal dispositions in the will.

II. If the cities of New Orleans and Baltimore are the universal legatees of John McDonogh, then it is clear that there can be no prohibited substitution in the will, and it is equally clear that even if it should contain fidei commissa, the only effect of them would be to exonerate the universal legatees from the obligations of discharging of them, as was held by the supreme court in the case of Beaulieu vs. Fernon. In the hurry of preparing this petition for a rehearing, we have been only able to glance at some of the numerous arguments in support of the validity of the bequest in favor of the cities of New Orleans and Baltimore. If this honorable court will afford us an opportunity of further argument, we feel confident that we can show beyond all reasonable doubt that the will ought to be maintained. We would further beg leave to suggest, that all the questions involved in this case will no doubt be decided in a few weeks by the supreme court of the State. All of which is most respectfully submitted.

C. ROSELIUS,
*Solicitor for defendants and petitioners.*

A. GRAILHE.
ROBERT PREAUX.

Endorsed: "1981." U. S. circuit court. Filed 11th Oct., 1852.
J. W. GURLEY, *Clerk.*

*Bill and petition of William Pharis and Rosannah Jarvis, heirs of the half blood, to be made parties and recognised as heirs, &c. Filed 15th Oct.*, 1852.

To the honorable the judges of the circuit court of the United States within and for the eastern district of Louisiana:

Your orators, William Pharis and Rosannah Jarvis, wife of Eli Jarvis, and duly authorized and assisted by her husband, the said Eli, all citizens of the State of Ohio, and residing in Chesterville, Morrow county, in said State, humbly complain and show: That they are citizens of the State of Ohio as above set forth, and that your orator, Wm. Pharis, and oratrix, Rosanna Jarvis, are next of kin and heirs of the late John McDonogh, who died at McDonoghville, in the State of Louisiana, some time in the month of October, 1850, and whose succession has been duly opened in the fifth district court of New Orleans. And thereupon your orator and oratrix aver and show, that the aforesaid John McDonogh was the son of the late John McDonogh, of Baltimore, with his second wife, Elizabeth; and that the said John McDonogh, the father, was married twice; that his first wife was named Rosabella, with whom he had three daughters, one of whom died young and without leaving children; that another of said daughters was married to John Pharis, of Frederick county, in the State of Maryland; that this last mentioned daughter, whose name was Sarah,

and who was the half-sister of John McDonogh, of McDonoghville, in the State of Louisiana, is the mother of your orator and oratrix, who are the legitimate offspring of the marriage of the said John Pharis and his wife Sarah McDonogh, and as such entitled, as next of kin and heirs of the half-blood, to a share of the inheritance of their aforesaid uncle, John McDonogh.

Your orator and oratrix further aver, that Mary Murdoch, wife of William F. Murdoch, of Baltimore, and others, heirs of the whole blood of the late John McDonogh, lately exhibited their bill in equity in this honorable court for the purpose of having themselves recognised as heirs, and to set aside certain pretended testamentary dispositions said to be made by the late John McDonogh; for the causes and reasons more fully set forth in said bill in equity, which causes and reasons your orator and oratrix adopt, and pray to be taken an dconsidered as making part of, and being incorporated in, this their bill of complaint, and pray leave to refer to said bill in equity of the said Mary Murdoch et als. vs. the Executors of John McDonogh et als., for the aforesaid purpose of annulling and avoiding the aforesaid testamentary dispositions, and for such other objects as may not be inconsistent with the purpose of this their bill.

Your orator and oratrix further show, that upon the bill thus presented by the said Mary Murdoch et als. vs. the Executors of McDonogh et als., this honorable court lately ordered a decree declaring certain testamentary dispositions of the late John McDonogh null, recognising the complainants in said bill as heirs and next of kin of the said John McDonogh, and reserving to the heirs of the half-blood, and all other persons claiming title, &c., to any part of the estate of the said John McDonogh, the right to come in and to become parties to the proceedings in the aforesaid equity suit of Mary Murdoch et als., and have their right passed upon, &c.

Your orator and oratrix further aver, that they are desirous to avail themselves of the provisions of the aforesaid decree, and by virtue thereof now come in and pray to be made parties, and that they be recognised and decreed to be next of kin and heirs of the half-blood, and as such entitled to their portions of the share of their deceased mother, Sarah Pharis, half-sister of the late John McDonogh, which they claim by representation.

Wherefore, and to the end that such orders and decrees may be rendered as to justice and equity may appertain, may it please the court to grant the writ of subpœna, to be directed severally to Mary Murdoch and Wm. F. Murdoch, her husband, Ann Cole, Eliza Hayne and her husband, Geo. Hayne, George T. Jenkins, guardian of his minor children, George, Margaret, McDonogh, and Conway Jenkins, all residing in Baltimore, State of Maryland; George P. Cole, of the State of South Carolina; Louisa Sheffey and her husband, Hugh W. Sheffey, of the State of Virginia; Jane Beaver and her husband, Wm. Beaver, Sarah Beaver and her husband, Jacob Beaver, Robt. H. Ham-

mett, Jesse Hammett, Anna Maria Snook and her husband, Peter Snook, all of the State of Maryland; Eliza Anderson and her husband, Joseph E. Anderson, of the State of Texas; Sarah Day, wife of Nicholson Day, Rosalba P. Lynch, wife of Andrew A. Lynch, of the State of Maryland; Maria Louisa Ord, wife of Pacificus Ord, of the State of California; and William F. Murdock, acting guardian of Louisa Welsh, —— Welsh, —— Welsh, and —— Welsh, residing in the city of Baltimore, State of Maryland; Christian Roselius, A. D. Crossman, W. E. Leverich, and F. B. D'Aquin, executors of the last will of said John McDonogh, all residing in the city of New Orleans, State of Louisiana, to the Mayor of the city of New Orleans, and the Society for the relief of destitute Orphans of said city and its president; commanding them and each of them to appear and answer hereto, and especially under their corporal oaths, to answer the interrogatories hereunto annexed, and to them severally addressed; and your orators and oratrix further pray that their rights as heirs be recognised as aforesaid, and their share of the inheritance be decreed to them in conformity to law; and they further pray for such other and further relief in the premises as may be consonant to equity and justice; and as in duty bound they will ever pray, &c.

G. SCHMIDT,
*Solicitor of complainants.*

*Interrogatory to be answered by the defendants severally.*

Are not the complainants in the foregoing bill heirs-at-law of the late John McDonogh, and is not their relationship to the deceased property set forth?

Endorsed: 1981, U. S. circuit court. Filed 15th Oct., 1852."
J. W. GURLEY, *Clerk.*

UNITED STATES OF AMERICA.

The President of the United States, to the marshal for the eastern district of Louisiana, greeting:

You are commanded to summon Mary Murdoch and William F. Murdoch, her husband; Ann Cole; Elizabeth Hayne, and her husband George Hayne; George T. Jenkins, guardian of his minor children, George, Margaret McDonogh, and Conway Jenkins; George P. Cole; Louisa Sheffey, and her husband Hugh W. Sheffey; Jane Beaver, and her husband William Beaver; Sarah Beaver, and her husband Jacob Beaver, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday in November, 1852, then and there to answer a bill and petition in chancery, filed against them and als. by William Pharis and als., in the suit wherein Mary Murdoch and als., heirs, &c., are complainants, and the executors of John McDonogh and als., are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this 15th day of October, in the year of our Lord one thousand eight hundred and fifty-two, and the seventy-seventh year of American independence.

[L. S.]

J. W. GURLEY, *Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, on or before first Monday in November, 1852, otherwise the bill may be taken pro confesso.

J. W. GURLEY, *Clerk.*

*Marshal's return.*

Received October 16, 1852, and on same day served copy of the within subpœna in chancery on Mary Murdoch and als., by handing the same to A. A. Fraser, esq., of the firm of Mott & Fraser, and one of the counsel of record in said suit. Returned Oct. 20, 1852.

CHAS. A. LABUZAN,
*Dep. U. S. marshal.*

UNITED STATES OF AMERICA.

The President of the United States, to the marshal for the eastern district of Louisiana, greeting:

You are commanded to summon the Mayor of the City of New Orleans to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on first Monday in November, 1852, then and there to answer a bill and petition in chancery, filed against him and als. by William Pharis and als., in the suit wherein Mary Murdoch and als., heirs, &c., are complainants, and the executors of John McDonogh and als., are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this 15th day of October, in the year of our Lord one thousand eight hundred and fifty-two, and the seventy-seventh year of American independence.

[L. S.]

J. W. GURLEY, *Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before first Monday in November, 1852, otherwise the bill may be taken pro confesso.

J. W. GURLEY, *Clerk.*

*Marshal's return, endorsed on the above.*

Received October 16, 1852, and on the 21st day of October, 1852,

served a copy of the within subpœna in chancery on the City of New Orleans, in the manner following, to wit, by handing the same to A. D. Crossman, mayor thereof, at his office in the city of New Orleans, and returned same day.

W. S. SCOTT, *U. S. M.*
By N. W. BUTLER,
*Dep. U. S. marshal.*

UNITED STATES OF AMERICA.

The President of the United States, to the marshal for the eastern district of Louisiana, greeting:

You are commanded to summon the Society for the relief of destitute Orphans and its president to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on first Monday in November, 1852, then and there to answer a bill and petition in chancery, filed against them and als. by Wm. Pharis and als., in the suit wherein Mary Murdoch and als., heirs, &c., are complainants, and the executors of John McDonogh and als. are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this 15th day of October, in the year of our Lord one thousand eight hundred and fifty-two, and the seventy-seventh year of American independence.

[SEAL.]

J. W. GURLEY, *Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, on or before first Monday in November, 1852, otherwise the bill may be taken pro confesso.

J. W. GURLEY, *Clerk.*

*Marshal's return.*

Received October 16, 1852, and on the 18th October, 1852, served copy of the within subpœna in chancery on "the Society for relief of destitute Orphans" and its president, by handing the same in person to G. B. Duncan, esq., president of said society. New Orleans, October 20, 1852.

CHAS. A. LABUZAN,
*Deputy marshal.*

UNITED STATES OF AMERICA.

The President of the United States, to the marshal for the eastern district of Louisiana, greeting:

You are commanded to summon Christian Roselius, A. D. Cross-

man, W. E. Leverich, and F. B. D'Aquin, executors, &c., to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on first Monday in November, 1852, then and there to answer a bill and petition in chancery, filed against them and als. by Wm. Pharis and als., in the suit wherein Mary Murdoch and als., heirs, &c., are complainants, and executors of John McDonogh and als. are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this 15th day of October, in the year of our Lord one thousand eight hundred and fifty-two, and the seventy-seventh year of American independence.

[SEAL.]

J. W. GURLEY, *Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, on or before , otherwise the bill may be taken pro confesso.

J. W. GURLEY, *Clerk.*

*Marshal's return.*

Received October 16, 1852, and on the 18th October, 1852, served copy of the within subpœna in chancery on C. Roselius and others, executors, by handing the same to C. Roselius, esq., in person, in the city of New Orleans. Returned October 20, 1852.

CHAS. A. LABUZAN,
*Deputy U. S. marshal.*

UNITED STATES OF AMERICA.

The President of the United States, to the marshal for the eastern district of Louisiana, greeting.

You are commanded to summon Robt. H. Hammett, Jesse Hammett, Anna Maria Snook and her husband, Peter Snook, Eliza Anderson and her husband, Joseph E. Anderson, Sarah Day, wife of Nicholson Day, Rosalba P. Lynch, wife of Andrew A. Lynch, Maria Louisa Ord, wife of Pacificus Ord, William F. Murdoch, acting guardian of Louisa Welsh, — Welsh, — Welsh, and — Welsh, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on [the] first Monday in November, 1852, then and there to answer a bill and petition in chancery, filed against them by Wm. Pharis et als., in the suit wherein Mary Murdoch et als., heirs, &c., are complainants, and the Executors of John McDonogh et als. are defendants.

Herein fail not, and have you then there this writ, with your endorsement thereon how you have executed the same.

1864.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two, and the seventy-seventh year of American independence. J. W. GURLEY, *Clerk*."

SEAL.]

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, on or before [the] first Monday in November, 1852, otherwise the bill may be taken pro confesso. J. W. GURLEY, *Clerk*.

*Marshal's return.*

Rec'd, October 16, 1852, and on the 18th October, 1852, served copy of within subpœna in chancery on Robert H. Hammett and others, by handing the same to J. P. Benjamin, esq., of the firm of Benjamin and Micou, solicitors. Ret'd, Oct. 20th, 1852.

CHAS. A. LABUZAN,
*Dep'y marshal.*

And afterwards, to wit, on the 18th day of October, A. D. 1852, the following entry was made in the minutes:

Special session, April term.

MARY MURDOCH et als., heirs, &c.,
vs.
THE EXECUTORS OF JOHN MCDONOGH et als. } 1981.

A petition having been filed herein, on the 11th instant, by the defendants, the City of New Orleans and the Executors of John McDonogh, praying for a rehearing on the grounds therein set forth, and the court having duly considered the same, this day delivered its opinion in writing, and in conformity thereto, and for the reasons stated doth order that the said application be refused.

*Final decree.*

And afterwards, to wit, on the 26th day of October, A. D. 1852, the decree rendered in this case and entered of record in the minutes on the 7th day of October, A. D. 1852, was duly recorded in the judgment docket, and signed, in the words and figures following, to wit:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

Special session, April term, A. D. 1852.

New Orleans, Thursday, 7th of October, 1852.

Present, Hon. Theo. H. McCaleb, district judge.

MARY MURDOCH et als., heirs of McDonogh,
vs.
THE EXECUTORS of McDonogh et als. } No. 1981.

This cause came on to be heard during the last term of this court,

and, after full argument, was taken under consideration, with the consent of counsel of all the parties that the decree should be pronounced at chambers, and entered of record and executed as in term time. And upon consideration thereof, and for the reasons contained in the written opinion now filed, it is ordered, adjudged and decreed, as follows: That all that part of the olographic will of John McDonogh beginning at the second paragraph with the words "It is my will and I direct my executors, (hereinafter named,) immediately after my death, to correspond," &c., on the second page, numbered as the sixth page of the printed copy of the will on file, and ending with the words "or otherways, and held and owned by said corporations," on the 33d page of the said printed copy of said will, being all and every portion of said will relative to the city of New Orleans, the city of Baltimore, the State of Louisiana, and the State of Maryland, the "general estate," the Colonization Society, a projected asylum in New Orleans, the Society for the relief of destitute Orphan Boys, a projected school farm in Maryland, free public schools in New Orleans and Baltimore, and the appointment of various boards of commissioners, agents, directors, &c., and for the investment and accumulation of the estate, be, and all said provisions are, declared illegal, null, and of no force and effect whatever; and that as to all the estate of said deceased, except such as is disposed of in the first paragraph of said will, the deceased died intestate, and his estate fell, by his death, to his heirs at law. That complainants are heirs at law of the deceased John McDonogh in the following proportions, to wit: Maria Louisa Ord, wife of Pacificus Ord, Laura J. Welsh, Thomas Welsh, Frank E. Welsh, and William P. Welsh, minors, represented by their guardian, William F. Murdock, are heirs of twelve-seventieths, ($\frac{12}{70}$ths;) one-half of said portion being for the said Maria Louisa, and the other half being equally divided between said minors. Anne Cole, Mary Murdock, wife of William F. Murdock, Eliza Hayne, wife of George Hayne, George F. Cole, Louisa Sheffey, wife of Hugh W. Sheffey, and the children of Margaret Cole, the deceased wife of George P. Jenkins, namely, George Jenkins, Mary McDonogh Jenkins, and Conway M. Jenkins, minors, represented by their father George T. Jenkins, are heirs of twelve-seventieths of the estate. The said Anna, Mary, Eliza, George F. and Louisa, each to take one-sixth part of said portion, and the remaining one-sixth part thereof to be equally divided between said minors. Sarah Day, wife of Nicholas Day, is heir of twelve-seventieths of the estate. Jane Beaver, wife of William Beaver, Sarah Beaver, wife of Jacob Beaver, Robert H. Hammett, Jesse Hammett, Anne Maria Snook, wife of Peter Snook, Eliza Anderson, wife of Joseph C. Anderson, and the children of Margaret Hammett, deceased, (said children not being parties,) are heirs of twelve-seventieths of the estate; the said Jane, Sarah, Robert, Jesse, Ann, and Eliza, to take each a seventh part of said portion, and the remaining seventh to be reserved for the children of said Margaret when they shall make themselves parties, and on due proof. Rosalba P. Lynch, wife of Andrew H.

Lynch, is heir of twelve-seventieths of the estate; the remaining ten-seventieths to be reserved for the heirs of the half-blood, when they shall make themselves parties, and on due proof. That the said complainants recover of the defendants' executors of the will of the deceased all and singular the property, real and personal, corporeal and incorporeal, composing the estate of the deceased, and especially all and singular the property of the deceased in the several parishes of the State of Louisiana, mentioned or comprised in the inventory of the succession, prepared by Thomas Layton and Adolph Mazureau, notaries public, a copy of which is in evidence; and that said complainants have execution, and be put in possession of the same, in conformity with law and the rules of court. That reference be made to the master in chancery for an account of the administration of the said executors, from the death of the deceased to the execution of this decree; and that said executors account to the said master in the premises, and that said master report to the court; and so much of the said bill as demands said account and the recovery of any moneys in the hands of said executors, is retained for further decree. That any other person or persons, not now parties to the proceedings, claiming title to the estate of the deceased, or any part thereof, be allowed to present their claims respectively before this court, to make due proofs thereof, and to become parties to the proceedings for the due establishment and adjudication thereof. That the costs of the complainants and of the executors be paid out of the succession of said deceased, and the costs of the other parties defendant by themselves respectively.

Decree rendered 7th October, 1852.

Signed 26th October, 1852.

THEO. H. McCALEB, [SEAL.]
*U. S. judge.*

*Petition for appeal, filed October* 26, 1852.

To the honorable the judge of the circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana. The petition of the Mayor, Aldermen, and Inhabitants of New Orleans, and of C. Roselius, William E. Leverich, A. D. Crossman, F. B. D'Aquin, citizens of New Orleans, State of Louisiana, and executors of the last will and testament of John McDonogh, deceased, respectfully shows, that they complain of error in a certain final judgment rendered against them in a certain cause in your honorable court of chancery, wherein Mary E. Murdoch and others are plaintiffs; and they pray that an appeal may be allowed them in giving security according to law.

L. PEIRCE,
*Solicitor for defendants.*

Endorsed: "1981" U. S. circuit court.

Filed 26th October, 1852.

J. W. GURLEY, *Clerk.*

*Order.*

Let the appeal be granted as prayed for, on defendants giving bond conditioned according to law, in the penal sum of one hundred thousand dollars, with C. Roselius, A. D. Crossman, W. E. Leverich, and F. B. D'Aquin, as sureties thereon, said appeal to operate as a supersedeas. October 26th, 1852.

THEO. H. McCALEB,
*United States judge.*

Service of citation of appeal accepted this 30th day of October, 1852.

RO. MOTT,
*Attorney of complainants.*

And on the 26th October, 1852, the following entry was made on the minutes:

*Special session.*

NEW ORLEANS, *Tuesday*, 26th *October*, 1852.

Present, honorable Theo. H. McCaleb, district judge.

MARY MURDOCH and als., heirs, &c.,
vs.
EXECUTORS OF McDONOGH and als. } No. 1981.

On motion of Levi Peirce, esqr., solicitor for defendants, and on presenting and filing a petition on behalf of said defendants, praying an appeal to the Supreme Court of the United States from the final decree herein rendered, and that the same may operate as a supersedeas, it is ordered, that the said appeal be granted as prayed for, on defendants executing their bond conditioned according to law, in the penal sum of one hundred thousand dollars, with Christian Roselius, A. D. Crossman, William E. Leverich, and François B. D'Aquin, as sureties thereon.

CLERK'S OFFICE, *circuit court of the United States,*
*fifth circuit, and eastern district of Louisiana.*

I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 240 pages, together with the annexed bound manuscript volume of 981 pages, contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Mary Murdoch et al., heirs of John McDonogh, vs. the executors of McDonogh et al., No. 1981 of the docket, so far as the same now remain of record or on file in said court.

[SEAL.] Witness my hand and the seal of said court at the city of New Orleans, this 4th day of November, A. D. 1852.

J. W. GURLEY, *Clerk.*

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as clerk.

[SEAL.] Given under my hand and seal, at the city of New Orleans, in said district, this 5th day of November, A. D. 1852.

THEO. H. McCALEB.